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**IMPERIUM ET LIBERTAS**





# IMPERIUM ET LIBERTAS

A STUDY IN HISTORY AND POLITICS

BY

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*DEDICATED*

TO THE

HON. ALFRED LYTTTELTON, K.C., M.P.

IN MEMORY OF

THE DAYS WHEN WE READ HISTORY TOGETHER

AT ETON AND AT CAMBRIDGE

AND IN GRATITUDE FOR AN UNBROKEN FRIENDSHIP



“ . . . salvâ  
Libertate potens.”  
—LUCAN.

“Beneficio quam metu obligare homines malit, exterisque gentes fide ac societate junctas habere, quam tristi subjectas servitio.”—LIVY.

“Hæc est in gremium victos quæ sola recepit  
Humanumque genus communi nomine fovet,  
Matris, non dominæ, ritu ; civesque vocavit  
Quos domuit, nexuque pio longinqua revinxit.”  
—CLAUDIAN.

“As long as you have the wisdom to keep the sovereign authority of this country as the sanctuary of liberty, the sacred temple consecrated to our common faith, wherever the chosen race and the sons of England worship freedom they will turn their faces towards you. . . . Deny them this participation of freedom and you break that sole bond, which originally made and must still preserve the unity of the Empire. . . . It is the spirit of the English Constitution, which, infused through the mighty mass, pervades, feeds, unites, invigorates, vivifies every part of the Empire, even down to its minutest member.”

—BURKE.



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# IMPERIUM ET LIBERTAS

## GENERAL OBSERVATIONS

WHEN men speak of the British, or the German, or the Russian Empire they usually have in mind a picture, as it were, of great spaces of country, cities, and populations, having common allegiance to a single political centre. But the expression *Imperium*, as used by the Romans, meant neither geographic space nor populations, but in the earlier times a military and subsequently a political power, whether exercised by an individual or a State. It most nearly corresponds to our words "command," "rule," or "control," and we speak in the Roman sense if we talk of "exercising empire." The poet Claudian, speaking of Rome, says :—

"Armorū legūque potens, quæ fundit in omnes  
*Imperium*, primique dedit cunabula juris."

And, in the same sense, Horace writes :—

"Super et Gerymantes et Indos *proferet imperium*."

Both in the older English and French the word was more commonly used in the Latin sense than it is now, and Pascal, for instance, when he wrote, "Les femmes ont un empire absolu sur l'esprit des hommes," however erroneous this view may be, very correctly used a political image in a different sphere.





If *Imperium* is power over others, *Libertas* may be defined as power over oneself, whether the "one" in question is a person, or corporation, or a nation. This is the definition given by Grotius, and it agrees with that of the Roman lawyers, who word it thus: "Liberty is the natural faculty of each to do as he pleases, unless he is restrained by force or law."<sup>1</sup> A writer of the eighteenth century says:—

"So far as anything is passive, so far it is subject to necessity; so far as it is an agent, so far it is free, for action and freedom are, I think, identical terms. The spring of action is the self-motive power, which is in animals spontaneity, and in rational ones what we call liberty."<sup>2</sup>

In so far as a person is obliged, at the command of others, to do or not to do certain things, he is not free; the province of his freedom consists in those things which he may do, or not do, according to his own will. Thus he may be free to think certain thoughts, and to express them in private, but not free to publish them in a book. *Libertas* and *Imperium* then are equally *power* regarded from two points of view, whether as exercised over oneself or over others. If men are to live together in any form of community in order to obtain the benefits of co-operation, each individual must surrender, or rather be content not to have, some portion of the full liberty which he might possess as a hermit or bandit. In each organic State or Nation the constituted authorities possess *imperium* in wider or narrower, more or less defined degrees, with regard to the individuals composing the community. The demarcation

<sup>1</sup> "Digest," Lib. i., Tit. v. "*Libertas est naturalis facultas ejus quod cuique facere libet, nisi quod vi aut jure prohibetur.*"

<sup>2</sup> Clarke's "Letters on Liberty."

of the province of power of each individual and of the State, in accordance with ever-varying circumstances, has been in every civilised nation the business of political art, whether exercised through judicial or legislative institutions. The whole law of contract turns upon the interpretation by the State of treaties made in the plenitude of their *libertas* by individuals, by which they confer *imperium* upon others over some of their own actions. The State enforces its interpretations by virtue of the *imperium* which it has over all individuals within the sphere of its influence.<sup>1</sup>

Every organised body of men, every body that is a true association and not a mere mob, whether it is a joint-stock company or a nation, resembles an individual in that it has a will or power of deciding and acting. This is true (so far as regards the relations of the body to the outer world) even if the whole will and power of decision is concentrated in a monarch or in a close aristocracy. Even under these forms of government the policy of the State is often dictated and almost always mightily influenced by the public opinion of all persons composing it. But the analogy between the State and the individual is more perfect when each person in the nation has not only his indirect but his positive, though minute, share in contributing to the collective will. This has been recognised by the best thinkers. Hooker says: "The lawful power of making laws to command whole political societies of men belongeth properly to the same entire societies."<sup>2</sup> And Locke says: "'Tis in their legislature that the members of a commonwealth are united

<sup>1</sup> Dr. Holland defines a "right" as "a capacity residing in one man of controlling with the assent and assistance of the State the actions of another."

<sup>2</sup> "Ecclesiastical Polity," Book i. 10.

and combined together into one coherent living body. This is the soul that gives form, life, and unity to the commonwealth."<sup>1</sup> This soul is the collective reason and will. So, too, Grotius speaks of the "*Consociatio plena et perfecta vitæ civilis cujus prima productio est summum imperium.*" A nation (or any other natural body of men, such as a church or a trade) which has no organs through which its will may work and act is like a man who is paralysed and cannot move. Livy, in describing the annihilating policy adopted by Rome towards Capua in revenge for its support of Hannibal, admirably pictures this condition: "It seemed good that the city of Capua should be only, as it were, a place of habitation and resort, that there should be no body of the State, neither senate nor assembly of the people, nor magistrates, no public council or government, that the multitude, associated for no purpose, should be incapable of consent."<sup>2</sup> The citizens of Capua ceased to be a body having power to decide and act as a living Being among other cities and having, through the *imperium* of the whole body over each individual composing it, the power of regulating its own interior life.

Raynal, a French writer of the eighteenth century, after defining liberty as "*la propriété de soi,*" analyses it into three kinds: "*la liberté naturelle, la liberté civile, la liberté politique; c'est à dire, la liberté de l'homme, celle du citoyen, et celle d'un peuple.*" These kinds of liberty are sometimes confused in popular controversy. For instance, at the beginning of the

<sup>1</sup> Book ii. 212.

<sup>2</sup> Book xxvi. s. 16. "Ceterum habitari tantum, tanquam, urbem Capuam, frequentarique placuit; corpus nullum civitatis, nec senatus, nec plebis concilium, nec magistratus esse; sine concilio publico, sine imperio, multitudinem nullius rei inter se sociam ad consensum inhabilem fore."

South African War of 1899-1901, both sides claimed in general terms that they were defenders of liberty. But the British were thinking of the liberty (or power) of the citizen—the right to vote; the Dutch of the liberty (or power) of the South African Republic to manage its affairs without external dictation or interference. *La liberté de l'homme* was not in direct question at all.

In the internal history of most European nations the political issue has been to vindicate the liberty or power of the body of the nation to manage its own affairs against royal dynasties, usually foreign, and basing their title in the first instance upon conquest. In a long struggle, from the days of the Plantagenets to those of the Brunswicks, the body of the English nation won the power of managing its own affairs through its own servants. This is the essence of national liberty. Montesquieu, in his *De l'esprit des lois*, defining a free or popular government, says that the ministers of a people are not its own unless it names them: "C'est donc une maxime fondamentale de ce gouvernement que le peuple nomme ses ministres, c'est à dire ses magistrats." Under this definition falls not only the American system under which the President is practically elected by the whole nation, but also the English under which the electorate, through the medium of Parliament, appoints its Prime Minister, or, at least, virtually restricts the choice by the Crown to one out of two or three persons. How this power was won from the Crown is written in the constitutional history of England.

The other political problem in the internal history of each nation has been to ascertain the extent of



liberty, or power, which can be retained by, or given to, the individual consistently with the unity and welfare of the whole community. The extent of the province of free action allowed to the individual depends partly upon the different circumstances of different societies, and is affected sometimes by density of population, modes of occupation, geographical position, and so forth. In the United Kingdom, for instance, and in the United States, a man is free to serve or not to serve in the army. In the nations of continental Europe, each exposed to the danger of sudden invasion, no man is free not to serve. But in every country the frontier of individual liberty is constantly varying. In England the individual has in some ways less liberty than a hundred years ago, though more perhaps than at some epochs in other ways. He is no longer free to educate or not to educate his children; to conduct his business, if he is a manufacturer or shipowner, according to his free will in all respects; to deal with his tenants as he pleases. On the whole, in this, as in other countries, the liberty of the individual has during the last hundred years been largely invaded by the *imperium* of the State.

Just as the power of action of each individual or corporation within a State is limited by that of the rest, so the power of action, or *libertas*, of each nation is limited by that of each other nation. Among quite independent States, not subject to any common or imperial government, this limit is informal. It takes the shape of war, or more usually, fear of war. English and Russians may equally desire to extend empire over regions of Asia still inviting conquest, but the freedom of each nation to do this is limited by dread of

war with the other. The "balance of power" is a very real thing, and is a rough substitute, in the way of demarcating spheres of action, for the controlling power exercised, where dependent or sub-imperial States are concerned, by the force of the organic Empire to which they belong. Indeed, the more or less civilised nations form a kind of dimly organised commonwealth, not unlike, on the large scale, to the condition of earliest feudal France or Germany, when the central power was hardly perceptible as yet in the chaos of almost independent principalities. The idea of decision of questions by law, or reason, is there, and is applied in minor cases, but war, or dread of war, is still the main immediate sanction, and is not, as within organised States or Empires, relegated to the far background.

When nations or States are not independent but confederate, like those belonging to the British Empire, or the more centralised German Empire, the problem of limits of action stands, as it were, half way between that relating to independent States and that relating to individuals or bodies composing only one State. In an Empire of this kind the nations are the units, but because they are nations the relation between them and the Empire partakes of, though it is not fully of, an international character.

Demarcation of powers is the essence of the science and art of politics. Guizot, who holds so high a place among the writers of the illustrious French historical school, makes, in his "History of Civilisation in Europe," some observations which may be fitly quoted here. He remarks that "of all systems of government and of political guarantees the federative system is certainly that which it is most difficult to establish; the system which consists in leaving in each locality,

in each special society, all that portion of government which can remain there, taking away that portion only which is indispensable to the maintenance of the whole society in order to carry it to the centre of that society, and there constitute it under the form of central government. The federative system, logically the simplest, is in fact the most complex ; in order to reconcile the degree of independence and local liberty which it allows to exist with the degree of general order and submission which it demands and supposes in certain cases, it is necessary that the will of man, individual liberty, should concur towards the establishment and maintenance of the system far more than in any other, for the means of coercion are less than elsewhere. The federative system then is that which evidently demands the greatest development of reason, morality, and civilisation in the society to which it is applied."

Guizot then points out that the mediæval or feudal social order was an attempt in practice to maintain a system of this kind, leaving the maximum of sovereign power in the hands of each feudal chief or free city, and the minimum in those of the suzerain or of the baronial assemblies, and that this early federation failed and gave place to centralising monarchies because the civilisation of those times was not sufficient to enable it to achieve success. A rude or inchoate federalism was, for the time, destroyed by the simpler and less complex "unitarian" forms of political life. In France, especially, the whole substance of provincial liberties, and of the liberties of seigneurs in their dominions was gradually sucked into itself by the highest sovereign power, and the Revolution and Napoleonic régime in this respect did but put the last touches to

the work of Louis XI., Richelieu, and Louis XIV. But in countries inhabited by races of the Teutonic breed—Germans, English, Swiss, Dutch—centralisation has never been so complete, and liberties of all kinds, individual, municipal, and provincial, have been better maintained throughout history against the central power. In these countries the principle of division of powers, which was at the bottom of the mediæval social order, now asserts itself with better chance of success, because we are enlightened by the teaching of history, or experience. Men know better than they did the art of giving and taking.

But, as conditions vary, so also the old question returns in varying forms. For ourselves, during the last hundred and fifty years, the most important political question has been no longer the demarcation of the frontiers between royal power and that of the body of the nation, or even that between the State and individual liberty, but of that between imperial power and national liberty. In order to reconcile these two things there must be some sacrifice of the advantages of imperial unity on the one side, and some sacrifice of the advantages of national independence on the other. Yet the benefits of the result should be greater than those either of unity alone or of independence alone. The sacrifice and the benefit is the same, in a wider sphere, as in the case of that compromise between the power of the State and the liberty of the citizen which has been so successfully worked out in the course of our domestic English history.

The first advantage of a great Empire is that it secures to weaker communities belonging to it the safety against outer foes which each would possess





were itself a mighty power. Each portion partakes of the strength of the whole. And, it must be remembered, it is not by overt war alone that the prosperity and existence of a nation may be threatened. If a country has a population too large to be supported by its own agriculture, or unfitted for agriculture by long aggregation in manufacturing centres; if it depends in large measure for its existence upon the manufacture and sale of raw material, such a country may be ruined by rival nations who exclude its manufacture in order to build up their own. But if many countries, with different industries, climates, and circumstances, are held together under a common Empire, and if free trade between such countries is made a condition of their union, each member of this group has a larger security against the war of tariffs than if it stood alone. Just, also, as such a group of nations under one Empire is strong not only in defensive but in offensive war, so, in the war of tariffs, a great Empire, with a single customs union, has, if it chooses to wield it, an immense bargaining power as against outside States. It can beat down hostile tariffs by the use, or threat, of reciprocating tariffs, and this weapon would be far more powerful than any of the kind which a single independent State could use.

The second advantage of a great Empire is that, within its jurisdiction, questions which wholly independent States are apt to determine by the ordeal of war, can be resolved by peaceful, just, and humane methods. Not long ago, for instance, the Judicial Committee of the Privy Council decided questions arising in Canada and involving large interests as between different States within the Dominion as to

rights in the great lakes and other waters. Had Canada been divided, like the same area in Europe, into several quite independent States, this is precisely the kind of question which might have led to war—the worst and most barbarous of remedies, with all its cost in life and wealth and happiness, with all its legacy of bitter memories, and ending, perhaps, in a decision in favour of the strongest, but contrary to true justice, since might is not always identical with right. But because the Canadian provinces all formed part of one Empire, the questions at issue could be settled by four or five wise elderly gentlemen seated round a table at Whitehall, after hearing the tranquil arguments of Mr. Blake, Q.C., and Mr. Haldane, Q.C. This is civilisation on a higher level—arbitration in lieu of war. Independent nations may refer disputes to arbitration, but to do so is their free choice; they are in no way bound to this course rather than to make their claim and defence by way of arms. But within an Empire, although ultimate resort to force is not beyond the frontier of possibility, it is, like use of the gold reserve in the Bank of England, an extremely remote expedient; and the constitutional lawyer takes, practically invariably, the place of that more primitive advocate, the soldier. Questions between nations held together in a federal or imperial connection can be decided according to justice and reason in lieu of the rude, unconvincing, and unsatisfying arbitration of comparative wealth and population, military organisation, generalship, and fighting capacity.

If the independence of nations less conduces to the security of the weak, the maintenance of justice, and the peace of the world, yet, on the other hand, active



life, thought, art, energy in making the most of a land's resources—in short, every outcome of vivid citizenship and patriotism—flourish better in small States than in wide centralised Empires. So, at least, experience seems so far to show. It is to the burning vitality of compact independent nations, the strong heart in the small body, to Judea and to Athens, to Rome the Republic, to the Free Cities of Italy, Germany, and Flanders, to France, to Holland, and to England the island, that we owe the highest achievements in the things which make life most worth having. The very peace and security which a great Empire establishes may prove a deadening influence. What became of Greece under the Macedonian Empire and the Roman? In India peace reigns to-day and order, but there is certainly less scope for the Eastern patriotism of race and class, less romance and food for poetry, less motive for heroic self-sacrifice, less to stir the heart and imagination of Rajput and Sikh, of Mah-ratta and Pathan, than there was in those years of glorious turbulence in the breaking up of the Mogul Empire. British rule tends to destroy native originality, vigour, and initiative. How to replace that which our rule takes away is the great Indian problem.

Montesquieu well observes<sup>1</sup> that in the utter decentralisation which followed the break up of the Roman Empire of the west, when every town and district became a virtually autonomous State and centre of power, every one did his best to make his little country flourish, as in the days of ancient Greece, and this so successfully that, in spite of irregular government, innumerable civil broils, continual wars, and absence of general commerce and

<sup>1</sup> *De l'esprit des lois*, xxiii. c. 24.

industrial science, the population in most European countries was larger than when he wrote. The cidevant capitals of Italy, so full of noble palaces and churches, and public buildings, bear witness to this. It may be that, as in agriculture, so also in human society, disintegration, or breaking up of the soil, at not too distant intervals is necessary for continued fertility. It would not, perhaps, be good for the life of the race that any very wide dominion or integration should endure for many centuries. St. Augustine believed that it would be happier for mankind if all kingdoms were small, provided that (alas! how difficult the condition) they could live peaceably alongside one another.<sup>1</sup> He himself saw, from his See in Africa, the Eternal City taken by the Barbarians, and he thought that the fall of Rome was due to the over-greatness of her Empire. "Then already," he wrote, looking back five centuries, "Rome had subdued Africa, had subdued Greece, ruled far and wide over other parts, and, as it were, not being strong enough to carry herself, may be said to have broken herself by her own greatness."<sup>2</sup> Aristotle would have agreed with Augustine, for he said that "there is a certain degree of greatness fit for States as for all other things, living creatures, plants, instruments, for each of these has its proper virtue and faculty, when neither very little nor yet excessively great."<sup>3</sup> But modern historians have thought that the Roman Empire perished not from over-greatness but from over-centralisation, and the destruction

<sup>1</sup> "Felicioribus sic rebus humanis omnia regna parva essent, concordii vicinitate lætantis" (*De Civ. Dei*, iv. 15).

<sup>2</sup> "Tunc jam Roma subjugaverat Africam, subjugaverat Græciam, lateque aliis partibus imperans, tanquam se-ipsum ferre non valens, se suâ quoddammodo magnitudine fregerat" (id. xviii. 45). Compare Horace's "Suis et ipsa Roma viribus ruit."

<sup>3</sup> *Pol.* vii. 4.

of the provinces in favour of the metropolis. The most real and living *nation* encountered by the Romans was that of the Jews, and they as a nation were irreconcilable. Otherwise the Empire was built either out of dominions previously subject to centralising despotisms, or out of previously free cities with small territories attached to them. The Carthaginians were a mercantile oligarchy. Rome hardly had the material for trying the experiment of reconciling imperial rule with the existence of nations, and her centralisation arose out of the nature of the case.<sup>1</sup> The failure of the Roman experiment does not prove that an empire which avoided this peril might not beneficially endure for a much longer period. In the British Empire, apart from India, we have learned, taught by a most costly experience, to concede to the Colonies the fullest liberty consistent with the maintenance of a common tie. This has been so fully accomplished that the desire of the nations willingly subject to the British throne now, it is believed, is rather for closer and more formal union than for more independence, whereas in earlier times the reverse was true.

<sup>1</sup> Guizot observes (*Histoire de la Civilisation en Europe*): "Une municipalité comme Rome avait pu conquérir le monde; il lui était beaucoup plus malaisé de le gouverner, de le constituer. Aussi quand l'œuvre paraît consommée, quand tout l'Occident et une grande partie de l'Orient sont tombés sous la domination romaine, vous voyez cette prodigieuse quantité de cités, de petits États faits pour l'isolement et l'indépendance, se désunir, se détacher, s'échapper pour ainsi dire en tout sens. Ce fut là une des causes qui amenèrent la nécessité de l'Empire, d'une forme de gouvernement plus concentrée, plus capable de tenir unis des éléments si peu cohérents. L'Empire essaye de porter de l'unité et un lien dans cette société éparse. Ce fut entre Auguste et Dioclétien qu'en même temps que se développait la législation civile, s'établit ce vaste système de despotisme administrative qui étendit sur le monde romain un réseau de fonctionnaires hiérarchiquement distribués, bien liés, soit entre eux, soit à la cour impériale, et uniquement appliqués à faire passer dans la société la volonté du pouvoir; dans le pouvoir, les tributs et les forces de la société."

The practical question for us who find ourselves born citizens of a great Empire, and also citizens of the United Kingdom, or of Canada, or Australia, or some other sub-imperial State, is in what manner the benefits of imperial union and national self-government can best be combined? How can we best reap the advantages of union while avoiding over-centralisation, the disease which killed Rome?

"I am," wrote Edmund Burke in the year 1777, "and ever have been deeply sensible of the difficulty of reconciling the strong presiding power that is so useful towards the conservation of a vast, disconnected, infinitely diversified empire, with that liberty and safety of the provinces which they must enjoy (in opinion and practice at least) or they will not be provinces at all."

The difficulty has been partly solved, chiefly by reason of the experience gained in the calamitous civil war against which Burke was then protesting, but in other forms it is with us still.

It is useful to study our colonial history in order that knowledge of the road by which we have travelled may indicate the line of further advance. This is the use of the study of history. If one has observed that a trunk road has run for many miles from east to west, it is a safe deduction that it will continue to do so.

The ancient Greek city, when its population became too large for its rocky island or edge of mainland shore, sent out a colony as a beehive sends out a swarm. The colonists took possession of new territory and there built a city, maintaining a pious regard, except when interests clashed, for the Mother City, but not a true political connection. The Romans, on the contrary, with their instinct of empire, planted a colony like a garrison in subject territory. The colonists

remained strictly subject to the Roman *imperium*; they enjoyed the civil rights of Roman citizens, and they had for their municipal affairs institutions moulded as nearly as possible on the home model—senate, popular assembly, and magistrates. The position of these colonies was deemed, by the Romans at least, to be superior — “propter amplitudinem majestatemque Populi Romani cujus istæ Coloniae quasi effigies parvæ simulacraque esse quædam videntur”—to that of the more numerous *Municipia* of once independent but conquered states which retained for domestic purposes their organisation of free days, while the sovereign powers of peace and war, and highest control in justice and administration, the *summum imperium*, were transferred to Roman authorities.<sup>1</sup>

The British Empire is due partly to conquest, as in India and Egypt, partly to colonisation, as in Australia and New Zealand. In Canada and South Africa the Empire is the result of blended conquest and colonisation, and, for this reason, more difficulties have arisen in Canada and South Africa than in either India or Australasia. Our colonial policy at first approximated to the Roman idea. English subjects in America were deemed to be in the full sense of the word English subjects. If distance prevented them from exercising their full privileges as citizens, such as voting for representatives in the national Parliament, yet they were held to be subject to all laws, and even taxation, which that Parliament might see fit to impose upon them.

<sup>1</sup> Home Rule questions arose. Cicero says, in the *Oratio pro Balbo*: “Ipsa denique Julia (lex lata est) quâ lege civitas est sociis et Latinis data. Qui fundi populi facti non essent civitatem non haberent. In quo magna contentio Heraclensium et Neapolitanorum fuit, cum magna pars in iis civitatibus fœderis sui libertatem civitati anteferebat.” Just as Grattan’s party in 1800 preferred existing institutions to incorporating union. “*Fundi*” means consolidated with Roman citizenship.

After this way of looking at the matter had led to the American Revolution, our colonial theory tended to move towards the Greek idea. But our steps were arrested half way. A colony is now virtually, though not in strict theory, an independent State in all matters that concern its home affairs. In foreign affairs, whatever influence a colony may exercise upon their conduct, it is guided and controlled by the statesmen responsible solely to the central Parliament of the United Kingdom. This system, however, seems to be giving way before a new conception. It is proposed in this book to examine in some detail the history of the modern colonial idea. For this purpose it is best, in the first place, to consider the conflict of views which led to the loss of the older American Colonies, and, in the next place, to trace the constitutional history of Canada. Canadian history is the bridge between the older and newer conception of the relation of a colony to the Mother Country. Within Canada also has been worked out a solution of that other problem so important to us at home, how to combine central and federal administration of public affairs with adequate provincial self-government.

In the United Kingdom itself three nations, in many respects distinct, have been combined into a single political incorporation for all purposes. I may, perhaps, be allowed to say that the result of a long and close study of the whole history of the United Kingdom has been to modify to some extent views which I, like other Englishmen of conservative connection, education, and temperament, had previously held. The country was, I am convinced, well advised in rejecting Mr. Gladstone's proposals of 1886 and 1893, but it seems to me that a measure of con-

stitutional evolution, on different lines, is becoming desirable. Nothing, of course, is more possible than that I may err in this surmise, and it may, at any rate, be true that the particular line of action with which I agree is not the best suited to the case. It is, however, in accordance with steps which have been successfully taken in our Colonies and elsewhere, in its broad lines, and it has been approved by men whose opinion carries weight. It seems to me to be in accordance with reason, to be justified by history, and to correspond with the real existing facts of nature in these islands. We suffer, it seems to me, at present from a discordance between forms and facts.

I propose, finally, to consider, without much detail, the present and possible future relations of the various nations or states now rather loosely held together by common allegiance to the British throne. The subject of *Imperium et Libertas* might no doubt be discussed in a wider, more abstract, and philosophic manner, and might be illustrated by reference to the history of several great aggregations of men, but I have thought it more practically useful to enclose the present study within the ample limits of the history of the British Empire.

Every polity has its own primary motive or principle. That of the Russian Empire, for instance, has always been the will of the monarch; that of the French Republic is democratic centralisation and equality. Administration of provinces through central officers is of the essence of each system. The principle of the British polity is neither autocratic nor democratic. Throughout English history local bodies, towns, and counties, however oligarchic or corrupt their own constitutions may from time to time have become, have

largely managed their peculiar affairs, and at the same time have sent representatives to share in the general councils of the nation. The primary motive of our constitution has always been local liberty with share in national council. On the larger scale this principle is working itself out in the modern imperial system, so far as concerns the white part of the Empire, although the process is as yet far from complete. But to know the principle is to have a signpost of the general direction of the road. If any nation, of European blood, within the British Empire, has no collective constitutional personality and no power of managing, subject to the *summum imperium*, its peculiar affairs, the case is an exception, and is contrary to the governing principle, and can only exist for a time and for temporary reasons. If, again, nations within the Empire, while freely managing their own affairs have no formal means of taking part in the general councils and sharing in the burdens of the Empire, this also is contrary to the governing principle of the British polity, and can only be a temporary phenomenon, comparable to the non-representation of large towns before the first Reform Act.

In connection with the subject of this book it is necessary to make some attempt to define the word "nation." This it is not very easy to do in a satisfactory way, although every one feels conscious of the meaning of the word. Its use is sometimes restricted to those communities which possess a collective legal personality, form of government, and large degree of independence, if not complete autonomy. I prefer, however, to use the word in the sense of a natural community of men, on a sufficiently large scale, whether or not they possess legal personality and governmental



forms. A nation is an aggregation of men, usually based in the beginning upon some degree of affinity of race, and distinguished from other aggregations by certain sentiments of greater union among themselves. These sentiments are due to original kinship, maintained by constant intermarriage, to geographical position, language, religion (some or all of these elements), but above all to a community of history. And it must not be forgotten that a nation can be made by a process of bitter suffering, defeat, subjection, regret, disappointment, as well as by a successful, prosperous, and glorious career. Nor can a nation once so fashioned be unmade, nor can existence cease with misfortune.

# PART I

## THE AMERICAN REVOLUTION



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BOTH in England and in America the popular idea of the events which led to the War of Independence and to the greatest result of the eighteenth century, the birth of the United States as a new and distinct nation, is something as follows. A weak and corrupt British Parliament, influenced by unprincipled Ministers, who were themselves the tools of a short-sighted and obstinate king, claimed the right to levy taxation upon the American Colonists without their consent. The Colonists resisted the claim, the resistance led to riotous proceedings in America, and these to coercive measures, and so the countries drifted into war. On this side of the Atlantic this view has become traditional. The fact is, that long before the War of Independence came to an end, the English were tired of it and disgusted with it. The nation, like a discontented Sultan, threw the blame for its actions on the Vizier. After the disastrous close they were inclined to say, "it was all due to the stupid blunders of this and that politician, George Grenville, Charles Townshend, Lord North," and to put the whole subject away from their minds as quickly as possible. This act of oblivion they achieved with very remarkable rapidity, assisted by the fact that within the next ten years came on the flood of



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French Revolution with all its chances and changes. Thus the view of the American War taken at its close became fixed and traditional. It was, moreover, strengthened and perpetuated by the school of Whig historians in the ascendant during the first half of the present century. Writers like Macaulay chiefly perceived in the American War an opportunity for assailing Toryism in general under cover of an assault upon the policy of George III. and Lord North, and upon the intellect of the squires and clergy who so doggedly supported them between 1770 and 1782. Sir George Trevelyan has recently, in his vivid and delightful book on the American Revolution, followed perhaps in somewhat the same track of political philosophy. Yet George Grenville and Charles Townshend, to whom the two taxing Acts were due, belonged to the old Whig connection, and at least half the old Whig party supported the Government in the war, because they were honestly convinced that England was in the right in principle, although particular acts which led to the war might have been foolish or inexpedient. Mr. Bancroft, the classic historian of the Revolution on the American side, took the solemn, patriotically pious, line of ascribing the Revolution to the political blindness, wickedness, or corruption of the English, while all virtue and adherence to sound principle was for the time colonial. Mr. Lecky first did adequate justice to the strength of the English case, looked at, as it should be, in due relation to the ideas then ruling with regard to the nature of the connection between a Mother Country and its Colonies. In this, as in other affairs, a distinction may be taken between the immediate and the deeper causes of the great event. Among the immediate causes are to be classed the

condition of the English Parliament at the time, the character of the obstinate and short-sighted, though sincere and honest king; the unfortunate incapacity of Lord Chatham, through illness, during some most critical months; the action of the country gentlemen in voting a reduction of the land-tax; and the vanity or desire to please of Charles Townshend. But if the matter is studied more deeply, one perceives that hardly any one at that time had a conception of that workable kind of relation between the Mother Country and the Colonies, which now seems to us to be the most natural thing in the world, and that the quarrel was due at bottom to the fact that opposite ideas held the field in the absence of this compromise. If Canada and Australia now stand in an easy and amicable relation to Great Britain, it is because the English learnt from the failures of their ancestors the way in which free and kindred nations can live together in a loose but very real union.

Nothing is more instructive than the ease with which the Stamp Act of 1765 passed through both Houses of Parliament. It excited there, and in the public at large, no more attention, it was afterwards said, than a turnpike bill. To the astonishment of the English the Act enraged the Americans. A sudden revelation was made of a gulf between the English way of regarding the Colonists and the Colonists' own view of themselves. When, by this new light, the whole matter was carefully debated in the following year in the British Parliament it was seen that two opposing theories confronted each other.

Most of those Englishmen who had stayed in the home island regarded the Colonists as being other



Englishmen, who had at various times crossed the seas, but had not thereby founded new States of any kind, or changed their political position.<sup>1</sup> They were, it was assumed, none the less subject to all laws and to all taxes which it might seem fit to the wisdom of the Imperial Parliament to extend to that part of his Majesty's dominions. To most Englishmen this seemed to be clear as day. The American Colonies were portions of the king's dominions, and therefore one in every sense with the Mother Country. In one realm there can be but one sovereign power—it seemed an obvious axiom of politics—and this power could be no other than King, Lords and Commons, the Imperial Parliament. Certainly, in each of the American Colonies there was an Assembly having some analogy to the British Parliament. These Assemblies were elected by the people, passed laws subject in some cases, not in all, to the ultimate sanction of the Crown, and raised taxes. But what was the origin of these Assemblies? Their powers and liberties depended upon charters granted either directly by the Crown, or by "proprietors," themselves holding the territory by grant from the Crown. Several of the proprietary governments had been surrendered to the Crown before the end of the colonial period, but in three Colonies these curious institutions survived, and in them the proprietor exercised royal functions. What was the constitution of these Assemblies? Some had two houses, and some one; in some the Upper House was nominated from above, in others it was elected.

<sup>1</sup> So the Navigation Act of 1663 recites that "His Majesty's plantations beyond the sea are inhabited and peopled by his subjects of this his kingdom of England."

The Englishman at home knew very little about these Assemblies, but so far as he could see, they did not in the least correspond with his idea of sovereign legislatures, or even with his idea of a depending or subordinate Parliament like that of Ireland. Dr. Johnson, laying down the law with his usual exaggeration to the faithful Boswell, declared that the American Assemblies were "no more than our Vestries." They appeared to the average Englishman to be in the nature of municipal corporations with power to pass laws and raise money for local purposes. If they exercised these functions upon a wider scale than the City of London or the City of Bristol, it was because the great distance made it practically useful that they should do so; but this did not affect their constitutional position or prevent the Imperial Parliament, if it chose to do so, from both legislating for and taxing the Americans in any way that it thought proper. The public writers who took the trouble to look into charters and precedents verified for him the view of the plain man in the street. They quoted, for instance, the words of the Pennsylvanian Charter, granted by Charles II. to William Penn, by which the king covenanted to impose no tax whatsoever upon the inhabitants of the province "unless the same be with the consent of the Proprietors, or Chief Governor, or Assembly, or by Act of Parliament in England." What could this mean but that his Majesty's Government, if they so desired, might raise money from Pennsylvania through the British Parliament, by virtue of the general principle of the supreme power of that Parliament in America? True it was that, as a rule, the Imperial Parliament had not legislated for American internal affairs or directly

taxed the Americans, but this was merely because it had not been necessary or expedient to do so. Many Acts of Parliament were made for England only, not extending to Scotland, nor was the taxation of England and Scotland uniform. When necessary the British Parliament had legislated for America. Witness the Navigation Laws and, still more directly, such Acts as those for the benefit of English manufacturers, restraining the exportation of hats made in any Colony into any other Colony or elsewhere, and limiting the number of apprentices to be employed by any American hatter, or the Act of 1750, prohibiting the erection or continuance of any iron-mill in the Colonies. The Navigation Laws were themselves a whole code passed by the Imperial Parliament restraining Americans from doing various acts, and forcing them to buy and sell in English markets. Indirectly, the Imperial Parliament had taxed America through these laws, and port duties were levied in American ports by British authority. A long list of precedents was prepared by officials for Ministers.

In point of origins and precedents, the British case was as strong as case can be. When ably set forth, as, for instance, in a masterly pamphlet of 1769, called "The Controversy between Great Britain and her Colonies Reviewed," it seemed to be invincible. And so, in fact, it was—on paper and in theory. The English argument was sound but for one fatal defect, viz., that distance and separation, and unlike circumstances, working upon that original difference of disposition and way of thinking, which made some Englishmen cross the Atlantic while others stayed at home, had formed the Americans into a distinct, though as yet undeveloped nation. They did not yet possess the central forms,

legislative and executive, through which a nation could act; they were outwardly but a bundle of colonies, yet the nationhood was there. The English argument assumed that the Americans were what they once had been but no longer were. The English who went to America had in fact grown into a real nation, although the English who had stayed at home knew it not, and the Colonists hardly knew it themselves. With the national life the national institutions had grown also, imperfect as they were. Transmarine municipal corporations had become Parliaments. So in English history the House of Commons had small power at first; was little more than a body for granting money on special occasions. But as the estate of the Commons grew in the realm in wealth and power, the House of Commons grew with it. At last that Assembly claimed by its acts the full control of administration, and Charles I., confronting their claim, amply justified though he was by theory and by precedent, found himself face to face with a fact too far accomplished to be resisted, and lost his throne and his life.

Unimaginative parents often drive their children into revolt by treating them, when grown up, as children still. This was precisely the error of the British Government, Parliament, and Nation with regard to the American Colonies. Burke fully admitted that the American Assemblies were not at first intended to be more than municipal corporations of a kind. "But," he said, "nothing in progression can rest on its original plan. We may as well think of rocking a grown man in the cradle of an infant."<sup>1</sup>

To the Englishman of 1766, assured of the invincible strength of his constitutional case, the prac-

<sup>1</sup> Letter to the Sheriff of Bristol.

tical reasons for imposing some taxation on America appeared to be no less cogent. Since Great Britain had fought a most costly war, in order partly to defend the Colonists from French aggression, it was surely now time to exercise the latent power of direct taxation in America in order to meet the increased burden. The Americans, indeed, alleged that they had in the late war put 25,000 men into the field at great cost, that they were not unable to protect themselves, and that the war had been fought by Great Britain for objects of her own; but these contentions were disregarded. The base ingratitude of the Colonists who had been saved by the arms of Great Britain from destruction by the French and Indians, and yet would contribute nothing, was the talk of every London coffee-house and dinner-table. The national debt has been largely incurred, said the Englishman, in protecting the Americans; the existing annual cost of the navy and army may still be debited in part to the same account. Is it not just that America should at last, now that she has grown wealthy and populous, make some regular contribution? And may I ask, added the Englishman, if money for the regular supply of imperial needs is not to be raised in America by the Imperial Parliament, how is it to be raised there at all? The question now is not one of provision by each Colony for its own needs, including border warfare with Indians in some cases, but of a regular supply for the general defence of all the king's dominions, including America. If Government has to apply for this to the Assembly of each Colony there would be no equality of burden. Virginia might make a large grant, Connecticut a small one, Massachusetts none at all. How could affairs be carried on in England if

Government had to apply separately for funds to each town or county?

It was with a view to difficulties of this kind that, in 1754, when there was apprehension of the French war, delegates from the several then endangered provinces met in congress at Albany, summoned by the Crown, and discussed a plan of federal union for certain purposes. There was to be a President-General appointed by the Crown, and a Grand Council consisting of members chosen by the House of Representatives in each Colony. The President and Council were to manage all Indian affairs and those of new settlements, the levying and maintenance of military forces and coast defence, and for these purposes to have power of raising taxes in the Colonies. This proposal may be deemed to be the germ of the future federal union. It was agreed to by the Congress, and sent over to London for approval. Probably the British authorities thought the scheme dangerous to imperial control; they rejected it, and suggested an alternative plan. By this the Governors of all the Colonies were to meet, each attended by one or two members of his Council, take in concert military measures, draw on the Treasury for funds, the Treasury to be reimbursed by a tax laid on the Colonies by Act of Parliament. This cautious scheme was communicated by Governor Shirley, of Virginia, to Benjamin Franklin, was objected to by him on the ground that it involved taxation without representation or consent, and no more was heard of it.

If, for want of political institutions in common, it was not possible to obtain from the Americans adequate contributions towards the cost of their own defence, it seemed obvious to Englishmen of the day

that recourse should be had to the latent powers of the Imperial Parliament. But, the Americans objected, "we are not represented in that Parliament." "True, not directly," replied the Englishman; but neither are the large majority of the inhabitants of Great Britain. Many large towns in England are not directly represented at all. "There are," wrote one pamphleteer, "more millions of subjects unrepresented in England, and yet taxed, than there are inhabitants in British America. Out of eight millions of inhabitants in this kingdom there are not 500,000 electors, the other 7,500,000 are exactly on the same footing with the three millions in America." But they are "virtually" represented, and so are the Americans. Besides, it was urged, no man really pays any tax by his own consent, but by the consent of the whole community. Hop-growers do not consent to the tax on hops, or cider-makers to the tax on cider; on the contrary, they usually protest against it; but they are taxed by the consent of the whole nation. Consent is implied when a man lives under a government, holds property under it, and enjoys its protection. The argument was irresistible if England and America were in truth one community. It was shipwrecked upon the fact that they had become two nations. The Atlantic was an ocean too wide to be bridged by the theory of "virtual representation."

At that point of history and experience it was perfectly natural that the mass of Englishmen should hold these views. They were not merely the opinions of the man in the street, but of the larger part by far of well-educated society, and of many eminent men who had given their lives to political work or jurisprudence. George Grenville, the author of the

Stamp Act, said in the debates on its repeal in 1766:—

“That this kingdom has the sovereign, supreme legislative power over America is granted. This cannot be denied, and taxation is a part of that sovereign power. It is one branch of the legislation. It is exercised over those who have never been represented. It is exercised over the Indian Company, the merchants of London, the proprietors of the stock, and over many great manufacturing towns.”

The logic was undeniable if the major premiss was correct.

And again he said, appealing to the practical mind:—

“Protection and obedience are reciprocal. Great Britain protecting America, America is bound to yield obedience. . . . When they want the protection of this kingdom they are always very ready to ask for it. That protection has always been afforded to them in the most full and ample manner. The nation has run itself into an immense debt for their protection, and now they are called upon to contribute a small share towards the public expense, and expense arising from themselves, they renounce your authority!”

In Grenville's mind there was no doubt whatever, and his mind was typically English. He wrote in a letter of 17th July 1768:—

“I have done my duty by endeavouring to assert the sovereignty of the king and Parliament of Great Britain over all the dominions belonging to the Crown, and to make all the subjects of the kingdom contribute to the public burdens for their own defence, according to their abilities and situation. I thought that we had the clearest right imaginable, and that we were bound



by every tie of justice and wisdom to do this, and I am convinced it would have been accomplished without any considerable difficulty if America had not received such encouragement to oppose it from hence as no other people would have resisted."

Grenville said in the same letter that he was quite ready to consider any plan for the representation of America in Parliament, but he could no more see why, in the meantime, America should not be taxed, than he could see why Birmingham or Manchester should escape from taxation until they were directly represented.

Grenville's view is summed up in the advice which he gave to George III. on leaving office in July 1765, "not to suffer any one to advise him to draw the line between his British and American dominions."

Another speaker who put the full English case very lucidly in the debates of 1766 was Lord Lyttelton. He urged that the supreme power of legislation must be somewhere, and that if taxation were objected to, the same objection would apply to all Acts of Parliament, for instance the Navigation Acts :—

"The only question before your Lordships is whether the American Colonies are a part of the dominions of the Crown of Great Britain? If not, the Parliament has no jurisdiction; if they are, as many statutes have declared them to be, they must be proper objects of our Legislature, and by declaring them exempt from one statute or law, you declare them no longer subjects of Great Britain, and make them small independent communities not entitled to your protection."

This Lord Lyttelton is a good example of the clear-headed man, of a logical turn, completely possessed by a consistent theory. Some years later, in the House

of Lords, he "contended without reserve for the legislative supremacy of Parliament over every part of the British dominions in America, the East and West Indies, in Africa, in Asia, in every part and quarter of the globe, nay, over Ireland itself, if it should become necessary; the right of taxation and legislation being indivisible and unconditional over every place to which our sovereignty extended."

The British claim was also maintained in the debates of 1766 by the high legal authority of Lord Mansfield. His careful argument rested upon these grounds:—

"1. That the British Legislature, as to the power of making laws, represents the whole British Empire, and has authority to bind every part and every subject without the least distinction, whether such subjects have the right to vote or not, or whether the law binds particular places within the realm or not.

"2. That the Colonists, by the conditions on which they migrated, settled, and now exist, are even more emphatically subjects of Great Britain than those within the realm, and that the British Legislature have in every instance previously exercised their right of legislation over them without any dispute or question."

"The people of America," he said, some years later, are as much bound to obey the Acts of the British Parliament as the inhabitants of London and Middlesex."

The leading arguments on the English side are excellently summed up in the "Annual Register" for 1766. The following passage may be quoted:—

"As the constitutions of the several Colonies are made up of different principles, so they must remain dependent (from the necessity of things and their

relations) upon the jurisdiction of the Mother Country, or they must be totally dismembered from it. No one ever thought the contrary till the trumpet of sedition has been lately blown. Acts of Parliament have been made, not only with no doubt of their legality, but with universal applause, the great object of which has been ultimately to fix the trade of the Colonies so as to centre in the bosom of that country from whence they took their origin. The Navigation Acts shut up their commerce with foreign countries. Their ports have been made subject to customs and regulations which cramped and diminished their trade, and duties have been levied affecting the very inmost parts of their commerce, and, among others, that of the post; yet all these have been submitted to peaceably, and no one ever thought till now of this doctrine, that the Colonies are not to be taxed, regulated, or bound by Parliament. A few particular merchants then, as now, were displeased at restrictions which did not admit them to make the greatest possible advantage of their commerce in their own private and particular branches; but though these few merchants might think themselves losers in branches which they had no right to gain, as being prejudicial to the general national system, yet upon the whole the Colonies were benefited by these restrictive laws, which, founded upon principles of the most solid policy, flung a great weight of naval force into the hands of the Mother Country, which was to protect the Colonies, and without an union with which the Colonies must have been entirely weak and defenceless; instead of which they became relatively great, subordinately and in proportion as the Mother Country advanced in superiority over the rest of the maritime powers of Europe, to which both mutually contributed, and of which both have reaped the benefit, equal to the natural and just relation in which they

both stand reciprocally, of dependency on one side and protection on the other."

"In short," adds the writer, summarising the opinion with which he did not agree, "protection gives a right of taxation. The obligation between the Colonies and the Mother Country is natural and reciprocal, consisting of defence on one side and protection on the other; *and common sense tells us that they must be dependent in all points upon the Mother Country, or else not belong to it at all.*"

The argument was not easy to meet. Almost every one in England, and indeed in America, admitted the ultimate legislative power of Parliament. How could they deny it when this power had so often been exercised without objection, and even sometimes at the request of the Colonists? The ground taken by some of the opponents of the Grenville policy was that there is an essential distinction between legislation and taxation, and that although laws affecting the Americans could be made in the Imperial Parliament, yet that they could not be taxed except through their own Assemblies. This was the line taken by a small party in England, and notably by Pitt and Camden. "When," said Pitt, "two countries are connected together like England and her Colonies, without being incorporated, the one must necessarily govern; the greater must rule the less but so rule it as not to contradict the fundamental principles that are common to both." But then arose the difficulty that, under the existing system of trade laws, the Americans were indirectly or virtually taxed, and always had been. Port duties were levied in America. If Americans wished to drink French wine they could not obtain it except from England. No European

goods could be imported into the Colonies except in English ships and from England.<sup>1</sup> Thus the advocates of the American cause who had already drawn a distinction between legislation and taxation were forced to draw a further distinction between external and internal taxation; and subsequently, when this position was found untenable, were driven to one not really stronger, a distinction between taxation for revenue purposes and such burdens upon the Americans as might be incidental to "commercial regulation." "Let this distinction then remain for ever ascertained; taxation is theirs, commercial regulation is ours," said Lord Chatham.

Thus English opinion was divided into three main divisions. The largest consisted of those who thought that the Imperial Parliament had a right to tax Americans, and that Americans ought to be taxed.

This view of the man in the street and coffee-house is well put by Benjamin Franklin in a letter which he wrote from London to America on August 8, 1767.

"The current of talk (he said) was that it is high time to put the right and power of this country to tax the Colonies out of dispute by an Act of taxation, effectually carried into execution, and that the Colonies should be obliged explicitly to acknowledge the right. Every step is being taken to render the taxation of America a popular measure here by continually insisting on the topics of our wealth and flourishing circumstances, while this country is loaded with debt, great part of it incurred on our account, the distress of the poor here by the multitude and weight of taxes, &c., and though the traders and manufacturers may possibly be kept in our interest, the idea of an American tax is very pleasing to the landed men, who therefore

<sup>1</sup> Under Navigation Act of 1673.

receive and propagate these ideas wherever they have influence."<sup>1</sup>

He added that, if such a Bill were brought in those who opposed it would be stigmatised as "Americans," "betrayers of old England," &c.

This view easily commended itself to the plain-thinking, tax-paying Englishmen, to whom subtle distinctions between taxation and legislation, or between different kinds of legislation or different kinds of taxation seemed, not without reason, to be sophistical special pleading. The opposite group consisted of those who thought that the Imperial Parliament had a right to pass laws affecting Americans, at any rate in matters touching the general trade and interests of the Empire, but had constitutionally no right to tax the Americans directly. Between these two groups came the central party, those who held that the Imperial Parliament had a supreme power in all things, taxation as well as legislation, but that it was not *expedient* that this power should be exercised in the Colonies, except in the last resort, and on very rare occasions of emergency, which might never occur. This was the line taken by the lucid and trenchant writer who called himself "Junius." He thought that "the general reasonings which were employed against that power (of taxation) went directly to our whole legislative right, and that one part of it could not be yielded without a virtual surrender of all the rest." But he argued that the right of taxing America should be deemed "a speculative right merely, never to be exerted, nor ever to be re-

<sup>1</sup> Franklin's Life, &c., vol. vii. p. 350. As to the part taken by the "landed men," whose great desire was to reduce the land-tax, see Burke's "Observations on a late State of the Nation."

nounced." This was also the line always taken by Edmund Burke.

If, for instance, said Burke, in a war some Colonies hung back and would not tax themselves for the common end, he would say to them, "Tax yourselves for the common supply, or Parliament will do it for you." But then, he added, "this ought to be no ordinary power, nor ever used in the first instance. This is what I meant when I have said at various times that I consider the power of taxing in Parliament as an instrument of Empire, and not as a means of supply."<sup>1</sup>

In 1766 this central group of moderate men did for the moment, though with great difficulty, prevail. The Stamp Act was repealed by the short-lived Rockingham Ministry, and at the same time an Act was passed, drawn on the lines of the Declaratory Act as to Ireland in 1719, and declaring in general terms the supreme power of the Imperial Parliament. The writer in the "Annual Register" says:—

"No matter of debate was ever more ably and learnedly handled in both Houses. It was argued, too, with moderation and temper. The subject was of the highest importance, and it was not without difficulties, both constitutional and political, in the discussion and in the consequences.

"Upon the question being put, the power of the Legislature of Great Britain over her Colonies in all cases whatever, and without any distinction as to taxation, was confirmed and ascertained without a division. And this was, perhaps, the only question that could have been thought of, upon which the Ministry and their antagonists in the opposition would have gone together on a division."

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<sup>1</sup> Speech of April 19, 1774.

The Declaratory Act enacted that—

“The said Colonies and Plantations are, and of right ought to be, subordinate unto and dependent upon, the Imperial Crown and Parliament of Great Britain, and that the King’s Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons of Great Britain in Parliament assembled, had, hath, and of right ought to have full power and authority to make laws and statutes of sufficient force and validity to bind the Colonies of Great Britain in all cases whatsoever.”

The Act also annulled and declared—

“Contrary to law, derogatory to the legislative authority of Parliament, and inconsistent with dependency on the Crown, all votes, resolutions, or orders which have been passed by any of the Assemblies in America by which they assumed to themselves the sole and exclusive right of taxing his Majesty’s subjects in America.”

Nine years later, in 1775, the American Congress, after reciting specific grievances, thus expressed their opinion of an Act which had been approved by Burke, Rockingham, Pitt, and by Englishmen of every shade of opinion. The Congress say :—

“But why should we enumerate our injuries in detail? By one statute it is declared that Parliament can of right make laws to bind us in all cases whatsoever. What is to defend us against so enormous, so unlimited a power? Not a single man of those who assume it is chosen by us or is subject to our control or influence, but on the contrary, they are all of them exempt from the operation of such laws; and an American revenue, if not diverted from the ostensible purpose for which it is raised, would actually lighten their own burdens in proportion as they increase ours.”



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The Declaratory Act enacted that—

“The said Colonies and Plantations are, and of right ought to be, subordinate unto and dependent upon, the Imperial Crown and Parliament of Great Britain, and that the King’s Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons of Great Britain in Parliament assembled, had, hath, and of right ought to have full power and authority to make laws and statutes of sufficient force and validity to bind the Colonies of Great Britain in all cases whatsoever.”

The Act also annulled and declared—

“Contrary to law, derogatory to the legislative authority of Parliament, and inconsistent with dependency on the Crown, all votes, resolutions, or orders which have been passed by any of the Assemblies in America by which they assumed to themselves the sole and exclusive right of taxing his Majesty’s subjects in America.”

Nine years later, in 1775, the American Congress, after reciting specific grievances, thus expressed their opinion of an Act which had been approved by Burke, Rockingham, Pitt, and by Englishmen of every shade of opinion. The Congress say:—

“But why should we enumerate our injuries in detail? By one statute it is declared that Parliament can of right make laws to bind us in all cases whatsoever. What is to defend us against so enormous, so unlimited a power? Not a single man of those who assume it is chosen by us or is subject to our control or influence, but on the contrary, they are all of them exempt from the operation of such laws; and an American revenue, if not diverted from the ostensible purpose for which it is raised, would actually lighten their own burdens in proportion as they increase ours.”

nounced." This was also the line always taken by Edmund Burke.

If, for instance, said Burke, in a war some Colonies hung back and would not tax themselves for the common end, he would say to them, "Tax yourselves for the common supply, or Parliament will do it for you." But then, he added, "this ought to be no ordinary power, nor ever used in the first instance. This is what I meant when I have said at various times that I consider the power of taxing in Parliament as an instrument of Empire, and not as a means of supply."<sup>1</sup>

In 1766 this central group of moderate men did for the moment, though with great difficulty, prevail. The Stamp Act was repealed by the short-lived Rockingham Ministry, and at the same time an Act was passed, drawn on the lines of the Declaratory Act as to Ireland in 1719, and declaring in general terms the supreme power of the Imperial Parliament. The writer in the "Annual Register" says:—

"No matter of debate was ever more ably and learnedly handled in both Houses. It was argued, too, with moderation and temper. The subject was of the highest importance, and it was not without difficulties, both constitutional and political, in the discussion and in the consequences.

"Upon the question being put, the power of the Legislature of Great Britain over her Colonies in all cases whatever, and without any distinction as to taxation, was confirmed and ascertained without a division. And this was, perhaps, the only question that could have been thought of, upon which the Ministry and their antagonists in the opposition would have gone together on a division."

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Events had developed when this declaration was made, but even at the time a strong protest was raised in America against the principle of the Declaratory Act of 1766. However, the Americans deemed the accompanying Repeal of the Stamp Act to be a great practical victory. If nothing new had been done in the way of legislation or taxation by the British Legislature, if the advice of Burke and those who thought like him had been taken, and no further practical deductions had been made from the theoretic principle of sovereignty, the question might have slept for a long time, though sooner or later it would doubtless have awoken from its slumber on the matter of the commercial code and the Navigation Acts. As Bacon said: "Where there is a great question it cannot fail to be agitated."

Ill-considered action on the part of the English Ministers did, in fact, keep the question alive without any real interval of quiescence. One measure most mischievous in its consequences was the Act passed in 1765 for compelling the provincial Assemblies to provide at their own cost certain lodging and articles of provision for royal troops quartered in America. The Assembly of New York having refused to comply with this Act, a Bill was in 1767 passed through the Imperial Parliament, suspending all the legislative powers of that Assembly. This measure raised in the most clear-cut form the question of the power of Parliament to interfere by legislation in the internal affairs of an American Colony. One of the few men in the English House of Commons who really understood the American point of view was Mr. Pownall, who had been a Governor in America. He put the issue very clearly in his speech upon the Bill of 1767:—

“If we consider each of the Assemblies of the Provinces and Colonies as what it is, a legislative, deliberative body, as the will of the province or colony, it must have a right to decide; if it has the free will to say *aye*, it must have the same power to say *no*. You may properly order an executive power to execute, but how, and with what propriety, can you order this deliberative body to exert its will only in one prescribed direction? If any supreme and sovereign will shall pre-ordain what this inferior power of deliberation shall will, it will make the same confusion in practice which the divines and metaphysicians have made in theory between predestination and free-will absolute. If the Assemblies of the Colonies will not in every mode, article, and particular provision decide in their deliberative capacity as an Act of Parliament directs and pre-ordains, you consider the Colonies as denying the sovereignty of Great Britain, than which nothing can be more unjust.”<sup>1</sup>

But the measure most directly in the main line of events which led to Lexington and Bunker's Hill was, of course, the Act passed in 1767 imposing duties on tea and some other articles imported into America. Charles Townshend, the inventor of this piece of un-wisdom, was, as Burke afterwards explained, possessed by the most fatal of passions in a statesman, the desire to please every one. He believed that he had hit upon a device for gratifying the majority in the House of Commons without seriously offending the Colonists. The foundation for the second part of this opinion was that advocates for America had in previous debates admitted the right of Parliament to impose duties

<sup>1</sup> Franklin, referring to this Act in a letter to Lord Kames, 11th April 1767, said that “the very nature of a Parliament seems to be destroyed by supposing it may be bound and compelled by a law of a superior Parliament to make a law contrary to its own judgment.”

upon America connected with the regulation of sea-borne commerce. Yet the preamble to this Act declared that the revenue to be raised in America was to be applied "for making a more certain and adequate provision for defraying the charges of the administration of justice and support of civil government in such provinces, and towards further defraying the expenses of defending, protecting, and securing the said dominions."

The measure could, therefore, only appear to the Americans to be a substitute for the abandoned Stamp Act. Civil government was to be carried on and a standing army kept in America by means of money levied from them without their consent. From the English point of view—that the Colonies were as integrally part of the realm as Kent or Yorkshire, although they had as yet no direct representatives in the House of Commons, and for convenience' sake more scope was given to local municipal institutions—this was as it should be. From the American point of view—that the Colonies were subject to the Crown and to the general commercial legislation of the Imperial Parliament, but were otherwise self-governing States—the preamble of the Act of 1767 revealed a deliberate assault on their national freedom. The two opposing ideas were brought into sharp contrast. Nor was the situation improved at all by the temporising Act of 1769, repealing five of the obnoxious duties, but leaving one, that on tea, "in order to keep up the right," and leaving also the obnoxious preamble.

"A modification," said Burke, "is the constant resource of weak, undeciding minds."

Lord North, who was in 1769 Chancellor of the Exchequer, and in the following year became Prime

Minister, being a good-humoured, plain-minded man, who cared little himself for questions of theory and abstract right, would not have been sorry to abandon the tax on tea together with the rest.

He said, in the debates of 1769, that he would personally have liked to repeal the whole Act of 1767 "on the conciliating principle," since it had given outrage, created "dangerous combinations beyond the Atlantic, and caused much dissatisfaction among British merchants trading to America." But, said he, the Colonists had gone so far in their resolutions and acts that to make a concession would only encourage them.

"We repealed the Stamp Act to comply with their desires, and what has been the consequence? Has the repeal taught them obedience? Has our lenity inspired them with moderation? No, sir, that very lenity has encouraged them to insult our authority, to dispute our rights, and to aim at independent government. Shall we, while they now deny our legal power to tax them, acquiesce in the argument of illegality, and give up that power? Shall we betray ourselves out of compliment to them, and, through a wish of tendering more than justice to America, resign the controlling superiority of England? God forbid. The properest time for making resistance is when we are attacked. To temporise is to yield, and the authority of the Mother Country, if now unsupported, is in reality relinquished for ever."

One can hear the "noble lord" delivering this fine peroration, cheered loudly by the patriotic gentlemen behind him. As a matter of fact, his eloquence was official, and he was only prevented by the pride and prejudice and principles of the king, and of a strong party in Parliament and in the country, from following



the dictates of his own good sense. The king, and those who took his view, had persuaded themselves that, without the visible outward sign of some taxation, sovereignty itself, that mysterious essence, would perish. They would not listen to the wise advice offered to them by Mr. Pownall, the man who knew America. In a speech made in the House of Commons in 1769, after making an admirable forecast of the events which would occur, he advised the House not to "stir up, but waive all questions which became mere articles of faith," such as the "sovereignty," and to make no innovations in practice. He observed that the Americans had always accepted external taxation, port duties, and so forth. But when the British Government argued from the right to impose external taxation to that of imposing internal, the Americans began to argue inversely from the wrong of imposing internal to the wrong of imposing external, and, said Pownall, "by your help have reasoned themselves into opposition to all external taxes which they had hitherto submitted to for a century and a half." And, he added, "Let the matter of right rest upon the declaratory law, and say no more about it. It may be understood (as it is in the same words as that respecting Ireland) that it shall stand in the same line of administration. I say it may be so understood, and will be better understood by being never explained. . . . Do nothing which may bring into discussion questions of right which must become mere articles of faith."

Five years later, in his speech of 19th April 1774, Edmund Burke expressed more eloquently, and carried further, the argument that, by pressing claims hitherto latent, we had taught and were teaching the Americans

to question claims which they had once hardly doubted. He said :—

“If, intemperately, unwisely, fatally, you sophisticate and poison the very source of government by urging subtle deductions and consequences odious to those you govern from the unlimited and illimitable nature of sovereignty, you will teach them by those means to call that sovereignty itself in question. When you drive him hard the boar will surely turn upon the hunters. If that sovereignty and their freedom cannot be reconciled, which will they take? They will cast your sovereignty in your face. Nobody will be argued into slavery.”

When it was decided, by the two or three individuals who really decide such matters, to repeal five-sixths of the Townshend's Act, but to retain the remaining sixth and the preamble, in order “to keep up the right,” a wrong road was taken, and from it there was no returning. After the discussions of 1769–1770, the matter went to sleep in England for four years. It is not in the nature of man to think for a long and consecutive space of a single political subject. America was comparatively quiet, and was at once and almost entirely forgotten. Benjamin Franklin, who was residing all this time in England, says, in a letter of July 1773, that the great defect in England was lack of attention to American affairs; but, he adds, “the majority of the nation rather wish us well, and have no desire to infringe our liberties.” In another letter of the same date he says that the American cause had in England “many friends and well-wishers. The Dissenters are all for us, and many of the merchants and manufacturers. There seems to be even among the country gentlemen a general sense

of our growing importance, a disapprobation of the harsh measures with which we have been treated, and a wish that some means may be found of perfect reconciliation." Evidently if the Government had taken advantage of this halcyon period to drop the tea tax they would have found strong support in England. But America was quiet; other affairs filled their minds, and the last chance passed away.

There is hardly a mention of America, after 1769, either in the Parliamentary History, or in the "Annual Register," or in the Memoirs and Letters of the period, until the attempt, by a change of method, to collect more effectively the tea-duty made the storm break upon the other side of the Atlantic in the beginning of 1774. The American outburst of smouldering passion, made visible by the Boston tea riots, had an unprovoked and wanton air, and aroused a sudden answering passion among Englishmen, startled from their happy and oblivious repose. The coercive measures rapidly framed and undeliberately adopted in the British Parliament still further blew up the fire in America. After this there was little calm argument on either side of the ocean about the constitutional relation between the Mother Country and the Colonists. Large phrases and wide-sweeping allegations usurped the place of argument. The Americans accused the English of long-formed designs to reduce them to slavery; the English, with equal error and conviction, believed that the Americans had for years aimed at complete independence, and that questions of right of taxation had been a mere cover of deep and treasonable designs, or had been used by conspirators to stir up the misguided, if honest, people. Nor were these accusations without justification if each side were to

be judged by the language of its extreme advocates. Governor Pownall, writing in the critical year 1774, said :—

“Men, having divided themselves into various contending interests on the matter, the lines of their conduct have diverged into various curves of measures. . . . To describe these in their utmost divergings one may say that one side, in the ardour of those exertions which they have thought necessary, have wrought themselves up to the maintaining a spirit of external government which goes in its consequences to absolute despotism. The other side, in the alarm and revulsion of their spirit against these supposed principles, have gone into a contrary extreme in actuating a spirit of internal government which must lead towards absolute sovereignty in the Colonies independent of the Government of Great Britain.”

So, as ever, violence of assertion called forth violence of reply, and each side said more than they really meant, and believed that the other side meant even more than they said. It is interesting and instructive to study the movements of opinion by which nations, who at bottom wish each other well, are driven into war by misunderstandings due to the nature of a situation ; and some passages may be quoted to show the temper and ideas ruling in England after the Boston outbreak.

In the debates which took place in Parliament in 1774 upon the measures of coercion, the Opposition wished to enter once more into discussion of the question of taxation and of the general policy which had led up to the present crisis. Ministers, on their side, opposed retrospective discussion. As the matter now stood, they said, the question was simply, Is America

to be independent? and if this question be decided in the negative, it merely remains to consider what steps shall be taken to enforce British authority. The chronicler of the "Annual Register" observes that the temper of the House was strongly against all retrospect, and this enabled Ministers to confine the discussion to the present misbehaviour of the Americans. "This gave them a great advantage, because since the violence of the Americans was unquestioned, it would be easy, when the inquiry was confined to that ground, to carry any proposition against them." The gulf between England and America had still further widened when the Parliamentary debate was renewed at the beginning of the year 1775. It was insisted that "We were reduced to the alternative of adopting the most effectual and coercive measures, or of relinquishing for ever all claims of dominion and sovereignty over the Colonies; that no medium could possibly be devised which would exclude the inevitable consequence of either system absolutely prevailing; for then, on the one hand, the supremacy of the British Legislature must be complete, entire, and unconditional, or, on the other, the Colonies must be free and independent." It was said also that all inquiry about the right or expediency of taxation was now fruitless—taxation was no longer the question; it was only the pretence of American disobedience, and that a repeal of any one of the laws of which they complained would be "a renunciation of all sovereignty for ever."<sup>1</sup> The speakers of the Opposition dwelt on the evils of civil war and the dangers of foreign intervention, and attacked "the men and measures that had involved us in such a labyrinth of evils." In

<sup>1</sup> "Annual Register," vol. xviii. p. 74, &c.

reply these evils and dangers were minimised or denied; "the evils of rebellion," it was said, "were incident to dominion and government, and in the present instance sprung entirely from the original traitorous designs, hostile intentions, and rebellious dispositions of the Americans."<sup>1</sup>

Many writers and speakers in England also ascribed the present trouble to the encouragement which the Americans had drawn from the speeches of men like Chatham, Burke, Barré, and other Whig leaders, and to the weakness of the Rockingham Ministry in repealing the Stamp Act in face of the violent and rebellious resistance of the Americans. The Colonists, it was said, had been taught to despise British power. A pamphleteer of 1774 attributes the "revolt of America" to the "spleen and intrigue of discarded Ministers, to the ignominious removal of our troops from a revolted Colony, actually in rebellion, but principally to the hasty and improvident repeal of the Stamp Act." Cowardice, it was thought, had in 1766 vainly donned the mask of magnanimity. As to the American sympathisers in England the language of the king's proclamation in August 1775 did not lack directness. "There is reason to apprehend," it ran, "that such rebellion hath been much promoted and encouraged by the traitorous correspondence, counsels, and comfort of divers wicked and desperate persons within our realm."

Abstract expressions like "sovereignty" and "British supremacy in North America" played at this period a great part in all the discussions. They were easily understood, in appearance though not in reality, by the "man in the street," and thus gave a great advantage

<sup>1</sup> "Annual Register," xviii. p. 61.

to those who used them. Governor Johnstone said with melancholy irony, in a debate on 2nd February 1775:—

“The question concerning the right to tax the Colonies, though clear to those who are accustomed to think deeply on the principles of free governments, is difficult to common apprehensions. Montesquieu has observed that, in despotisms, everything ought to be made to depend on two or three ideas. As for instance, is there anything so fit to solve this dispute as the ‘unity of the British Empire,’ ‘the supremacy of the legislative authority of Great Britain,’ ‘the omnipotence of Parliament?’ Is there any man so ignorant, after having heard these sounding words, as not to comprehend the whole of the controversy?”

And Burke, in the same debate, said that the “prevalent idea which alone can make one honest man the advocate for Ministerial measures is that the Americans attack the sovereignty of this country,” whereas, said he, they were not attacking the sovereignty, “but a certain use of it.”

King George III. wrote in February 1775: “I am a friend to holding out the olive branch, yet I believe that when once vigorous measures appear to be the only means, the Colonies will submit. I shall never look to the right or to the left, but steadily pursue that track which my conscience dictates to be the right one.” So spoke the king, and, although there were many, and some illustrious exceptions, there can be no doubt that he expressed the feeling of the nation. The Americans, taking up arms and resisting his Majesty’s forces at Lexington and Bunker’s Hill, appeared to begin the war, and this fact removed the last sympathy for their cause from the minds of many. Lord Howe,

a type of the moderate-minded man, wrote: "The country must now fix the foundation of its stability with America by procuring a lasting obedience."

The great majority of men are incapable of examining any question in a judicial spirit, are consequently led to identify justice with their own interest, and are unable to imagine the feelings of those guided by a different set of ideas and interests. That England was right in the matter of taxation was as obvious to the man in the street in London as it was obvious to his fellow Anglo-Saxon in the street at Boston that England was wrong. And not only to the ordinary man in the London street was the cause of England indubitably right, but to men of far superior mind, like Dr. Johnson<sup>1</sup> and Gibbon the historian. In one of his letters to Mr. Holroyd, 31st January 1775, Mr. Gibbon wrote :—

"For my own part I am more and more convinced that we have both the right and the power on our side, and that, though the effort may be accompanied by some melancholy circumstances, we are now arrived at the decisive moment of preserving or losing for ever both our trade and empire."

The English were assured that they were in the right—as, indeed, in one sense they were—by a united Government, by high constitutional authorities like Lord Mansfield, by almost all the bishops and clergy, and by the majority of the ephemeral writers on public affairs. Almost all the addresses to king and Parliament condemned the Americans; the country gentlemen, the manufacturers, the smaller middle class, took

<sup>1</sup> See Dr. Johnson's pamphlet, "Taxation no Tyranny," *passim*.



for the most part the same line. The Whig Opposition was cut in two, many of the party supported the Government, and very few of them openly opposed the continuation of the war.

In England the American cause won the sympathy of a minority among the political and professional classes. In the earlier stages of the controversy, and even, perhaps, up to the Declaration of Independence, a majority, perhaps, of the merchant class, especially in London and Bristol, were against the American policy of the Government. "You remember," said Burke, in his speech in 1780 to his Bristol constituents, "that in the beginning of this American War you were greatly divided, and a very strong body, if not the strongest, opposed itself to the madness which every art and every power were employed to render popular, in order that the errors of the rulers might be lost in the general blindness of the nation." But as the war progressed the City of Bristol was led for a time "to distinguish itself by zeal in that fatal cause." Burke, for two or three years before 1780 could not bring himself to visit his constituents or to show them, he said, "a face that could not joy in your joys or sorrow in your sorrows." But, he added, "time at length has made us all of one opinion, and we have all opened our eyes on the true nature of the American War."

While the Church of England clergy seem to have solidly supported the Government, the old Dissenting interest as naturally sympathised with the Americans, descendants so largely of men who had gone out into the wilderness for the sake of religious freedom. The new sect of Wesleyans seem, however, to have taken the dominant view. And yet, on the threshold of the war, John Wesley himself, who had travelled in

America, drew back. He wrote, in June 1775, a curious letter to Lord North, in which he said :—

“I am a high churchman, the son of a high churchman, bred up from my childhood in the highest notions of passive obedience and non-resistance, and yet, in spite of all my long-rooted prejudices, I cannot avoid thinking these are oppressed people, asking for nothing more than their legal rights . . . But, waiving this, I ask, Is it common sense to use force towards the Americans? Whatever has been affirmed these men will not be frightened, and they will not be conquered easily. Some of our valiant officers say, ‘Two thousand men will clear America easily.’ No, nor twenty thousand, be they rebels or not, nor, perhaps, treble that number.<sup>1</sup> They are strong, they are valiant, they are one and all enthusiasts for liberty—calm, deliberate enthusiasts . . . But you are informed they are divided amongst themselves. So was poor Rehoboam informed concerning the ten tribes, so was Philip informed concerning the people of the Netherlands. No, they are terribly united; they think they are contending for their lives, children, and liberty.”

In Ireland the dominant Protestant class well understood and largely sympathised with the American cause. The commercial and political grievances of a dependent kingdom were a school of experience. In 1770 Franklin wrote: “Our part is warmly taken by the Irish in general, there being in many points a similarity in our cases.” Irish troops were indeed sent to America, but not without keen opposition in the Dublin Parliament. Fitzgibbon said: “The war is

<sup>1</sup> There was in England before the war began, and for some time after, a great under-estimate of the force necessary to subdue the Americans. Gage wrote after Bunker's Hill: “The success has cost us dear; the trials we have had have shown the rebels are not the *despicable rabble too many have supposed them to be.*”

unjust, and Ireland has no reason to be a party therein;" and Ponsonby declared that "if we give our consent we shall take part in a war contrary to justice, to prudence, and to humanity."

When the war had actually begun, it was most natural that it should be felt in England that, whatever mistakes in policy might have been made in past years, the question was now narrowed down to the clear and great issue whether America should or should not remain part of the British Empire.

After the events of 1775, Lexington, on April 19, and Bunker's Hill, on June 17, and the evacuation of Boston, even men who had been inclined to take the American view on previous occasions felt that a striking proof of British power must be given before terms of conciliation could be further considered.

" . . . We were now in a position which did not afford a possibility of receding without shame, ruin, or disgrace. The contest was Empire. We must either support and establish our authority, or give up America for ever. The eyes of all Europe was upon us. The future fate of the British Empire, and of ages yet unborn, would depend upon their firmness or indecision."<sup>1</sup>

Nothing, it has been said, except a great Church, is so proud as an imperial nation, or so loath to confess itself in error. The vast majority of the English, when military operations had begun, and had during the first few months gone somewhat against the king's forces, could not but assent to the ministerial argument that "the Colonists must feel the weight of our power and the effects of our resentment until they became experimentally sensible of the ill consequences that attended

<sup>1</sup> "Annual Register," vol. xix. p. 61.

their denial of the authority of Parliament, and were brought to a thorough knowledge of their own littleness and insignificance when under our displeasure," and that this was "the only sure and conclusive method of curing the present and of preventing future evils of the same nature."<sup>1</sup>

Again the same excellent summarist of contemporary history, speaking of the English temper at the beginning of the year 1776, says:—

"The late engagements in America had in a certain degree affected both the national and military pride of the people. Many of those who had not approved of our late conduct with respect to the Colonies, thought it now too late to look back, or to inquire into past causes; that Government must be supported at any rate; that we must not hesitate at any expense or danger to preserve our dominions; and that whoever was right in the beginning, the American insolence deserved chastisement at present."<sup>2</sup>

The military operations during most of the year 1776, and until the autumn of 1777, went decidedly in favour of the British, and seemed to promise a speedy termination of the war. It became still more difficult for English minds to admit any arrangement until definite success had been accomplished. Burke said that, after "our great but most unfortunate victory at Long Island, all the mounds and banks of our constancy were borne down at once; and the phrensy of the American War broke in upon us like a deluge. All men who wished for peace or retained any sentiments of moderation were overborne or silenced."<sup>3</sup> At this point, for a time, all criticism was hushed,

<sup>1</sup> "Annual Register," vol. xviii.      <sup>2</sup> *Ibid.*, xix. 38.

<sup>3</sup> Speech at Bristol election, 1780.

all opposition to the war policy broke down. The "Annual Register" observes that in the year 1777—certainly until the surrender of Burgoyne at Saratoga—the war was popular with the majority of the nation.

"War is seldom unpopular in this country, and this was attended with some circumstances which seldom have accompanied any other. The high language of authority, dignity, and supremacy which had filled the mouths of many for some years, fed the vanity of those who could not easily define, or who perhaps, had never fully considered the extent of the terms or of the consequences which they were capable of producing; and the flattering idea of lessening the national burdens by an American revenue, whilst it was fitted to the comprehension of the meanest capacity, was not less effective in its operation upon those of a superior class and order. To the powerful principles of national pride and avarice was added a laudable disposition to support those national rights which were supposed to be invaded, and a proper indignation and resentment at that ingratitude and insolence which were charged upon the Americans, and to which only the present troubles were attributed by those who were most active in fomenting the principles of hostility far more than they had done at the beginning of this contest."<sup>1</sup>

When the war had gone so far, adds the writer, "carelessness and indifference prevailed throughout the nation." One sees why this was so; it always happens. All the arguments had been used again and again; every one had arrived at his own conviction, one way or the other, and no one could any longer persuade any one else.

"It is some time," wrote Burke, in 1777, "since I

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<sup>1</sup> "Annual Register," xx. 23 (for year 1777).

have been clearly convinced that, in the present state of things, all opposition to any measures proposed by ministers, where the name of America appears, is vain and frivolous. You may be sure that I do not speak of my own opposition, which in all circumstances must be so, but that of men of the greatest wisdom and authority in the nation . . . Several very prudent and very well-intentioned persons were of opinion that, during the prevalence of such dispositions, all struggle rather inflamed than lessened the distemper of the public counsels. Finding such resistance to be considered as factious by most within doors, and by many without, I cannot conscientiously support what is against my opinion, nor prudently contend with what I know is irresistible.”<sup>1</sup>

Lord Shelburne, who was both a statesman and a philosophic observer of mankind, related, in 1776, a conversation which he had had with a Wiltshire farmer, whose way of looking at the matter was, he said, a just picture of that of the majority of people. He had asked the farmer what he thought of the American War. The farmer “wished for peace, but thought the Colonies should be taxed as well as England.” “Now,” said Lord Shelburne, “if that man were in Parliament he would reason in exactly the same way. He would think that America should pay taxes as well as England, and that, as we had the power, we ought to employ it to enforce so evidently fair and equitable a claim, and when the measures of enforcing obedience to the laws were resisted and attended with great difficulty, he would probably wish for peace, but yet be tempted to go on rather than forego the object of alleviating our own burdens.”

<sup>1</sup> Letter to the Sheriff of Bristol.

In the summer of 1776, it must be remembered, the thirteen Colonies, driven by the necessity of more effective internal administration, and in order to treat with and secure the aid of foreign Powers, declared themselves free and independent States, abjured all allegiance to the British Crown, and renounced all political connection with the Mother Country. "Fatal day!" exclaims the chronicler. "Such are the unhappy consequences of civil contention. Such the effects that may proceed from too great a jealousy of power on the one side, or an ill-timed doubt of obedience on the other."<sup>1</sup>

The question for Englishmen did indeed then become that of Empire. The ministerial orators in the autumn of 1776 said that the only question now was whether we should not resign the Colonies, and with them our rank in the world.

"These, they said, are the great objects under the consideration of Parliament. The declaration of independency has done away with all other questions on the American subject. Taxation, legal rights, charters, and Acts of Navigation are now no more. That whirlpool has swallowed them all up within its vortex. It was only through the strength derived from her Colonies that this nation was enabled to hold a first place among the greatest nations of Europe. Take them away and she sinks into nothing. It is only now to be determined whether without an effort we shall submit ingloriously to inevitable ruin, or whether by a vigorous exertion we retain our usual power and splendour."<sup>2</sup>

The Declaration of Independence, adds this writer, "was a great bar to accommodation, because it added

<sup>1</sup> "Annual Register," xix. 165.      <sup>2</sup> Ibid., xx. 40.

greatly to the alienation of the people to the Americans, their cause, and their pretensions. Ministers certainly derived thence no small degree of strength throughout the nation."

One can well understand this. One can well understand the feeling which prompted such words as these, in a letter written by Earl Temple to his sister, Lady Chatham, in October 1777: "I am no party to the war, nor am I to the causes of it, which I think my greatest happiness, but, engaged as we are in, I think, a most just cause, I cannot but wish victory to dear, dear England. Reconciliation, founded upon the independence of America, makes me rather choose to treat with a beaten enemy; at the same time I confess I see no promising solution any way." In the same spirit Lord Chatham, who, when the war began, had even withdrawn his son from the army, made the last speeches of his life. In that of 20th November 1777, he said:—

"The Americans contending for their rights against arbitrary exactions, I love and admire—it is the struggle of free and virtuous patriots; but contending for independency—a total separation from England—as an Englishman I cannot wish them success, for in a due constitutional dependency, including the ancient supremacy of this country in regulating their commerce and navigation, consists the material happiness and prosperity both of England and America."

This great Englishman, when he conquered Canada, was in harmony with the course of Destiny. He died fighting in his noble mind against that which was no less inevitable, the loss of the American Colonies.

The Declaration of Independence hushed for a time opposition in England, and rallied to the Govern-



ment many men who had been opposed to their American policy. On the other side, this tremendous and irretrievable step did to some extent disunite the Americans. There were among them a large minority who had sympathised in a greater or less degree with the movement for maintenance of colonial rights, but who were not at all disposed to break with the British Empire. A large number of loyalists fought on the British side, risking and losing their lives and property.

Mr. Lecky finely says in his history<sup>1</sup> that the American loyalist minority "comprised some of the best and ablest men America has ever produced, and they were contending for an ideal which was at least as worthy as that for which Washington fought. It was the maintenance of one free, industrial, and pacific empire, comprising the whole English race, holding the richest plains of Asia in subjection, blending all that was most venerable in an ancient civilisation with the redundant energies of a youthful society, and likely in a few generations to outstrip every competitor and acquire an indisputable ascendancy on the globe."

Mr. Lecky also says that "the American Revolution, like most others, was the work of an energetic minority, who succeeded in committing an undecided and fluctuating majority to courses for which they had little love, and leading them step by step to a position from which it was impossible to recede." But if in America there were men who contemplated and aimed at entire separation and independence before the war began, their number was very small indeed. The common English belief of that day, that there had

<sup>1</sup> "History of England," vol. iv. p. 192.

existed for years a great conspiracy aiming at independence, was as foundationless as the American allegation that the king and his Ministers were resolved to reduce America to a "state of slavery." On this point the English were much misled by some of their worried and puzzled official agents and heated loyalist friends in America. For instance, General Gage wrote from Boston to Lord Dartmouth, the Minister, in August 1775:—

"The designs of the leaders of the rebellion are plain, and every day confirms the truth of what was asserted years ago by intelligent people; that a plan was laid in this province and adjusted with some of the same stamp in others for a total independence, whilst they abused people in England, called friends of America, as well as many in this country, with feigned professions of affection and attachment to the present state, and pretended to be aggrieved and discontented only on account of taxation. . . . They would still deceive and lull the Mother Country into a belief that nothing is meant against the nation, and that their quarrel is only with the Ministers; but it is to be hoped that the nation will see through this falsehood and deceit. It matters not who holds the helm of the State; the stroke is levelled at the British nation, on whose ruins they hope to build their so much vaunted American Empire."

And in a subsequent letter he hoped that all men would now see "through all the disguise; that this is no sudden insurrection of America, but a preconcerted scheme of rebellion hatched years ago in the Massachusetts Bay, and brought to this perfection by adherents on both sides of the Atlantic." And Gage, with feelings natural to a mortified general, attributed the first military failures to this long premeditation of

the Americans; for, he said, "the rebels have been prepared to execute their plan, while the Government, not apprehensive of so general a revolt, has been unprepared to oppose it." The fact, of course, was that the Colonists, having had, fifteen years earlier, a long war in which they had taken part against the French and Indians, and being never free from Indian border raids, were not badly armed, and had sufficient training to fight a defensive war against regular troops in their own wide and difficult country. But for a time most Englishmen believed in the long-prepared plot of expelling all British rule from North America, and were ready to say, like Mr. Acland in the House of Commons in October 1775: "That the Americans have been long contending for independence I am firmly persuaded." "I have not a doubt," said Lord Mansfield in December 1775, "that ever since the Peace of Paris the northern Colonies have been meditating a state of independence on this country."

The evidence shows, however, that there was no ground for the belief in a general and long-standing conspiracy to destroy British supremacy in North America, and that by our own proceedings, due to the non-existence as yet of the true idea of relations between colonies and the metropolis, loyal subjects of the Crown were transformed into open and successful rebels.

It is worth while to call some witnesses upon this point; and first, Benjamin Franklin, in his often quoted examination before a Parliamentary Committee in 1767. Asked, "What was the temper of America towards Great Britain before the year 1763?" he replied:—

"The best in the world. They submitted willingly to the government of the Crown, and paid in all their

courts obedience to Acts of Parliament. Numerous as the people are in the several old provinces, they cost you nothing in forts, citadels, garrisons, or armies to keep in subjection. They were governed by this country at the expense only of a little pen, ink, and paper. They were led by a thread. They had not only a respect, but an affection for Great Britain, for its laws, its customs, and its manners, and even a fondness for its fashions that greatly increased the commerce. Natives of Britain were always treated with particular regard; to be an Old England man was of itself a character of some respect, and gave a kind of rank among us."

Eight years later, Franklin, in a letter to his son, dated 23rd March 1775, narrates a conversation which he had had with Lord Chatham in August 1774:—

"I assured him that having more than once travelled almost from one end of the Continent to the other, and kept a great variety of company, eating, drinking, and conversing with them freely, I never heard in any conversation, from any person, drunk or sober, the least expression of a wish for a separation, or a hint that such a thing would be advantageous to America."<sup>1</sup>

Another witness of the events of the time, John Jay, said, in a letter written in his old age:—

"During the course of my life, and until after the second petition of Congress in 1775, I never did hear an American of any class, or of any description, express a wish for the independence of the Colonies. It has always been, and is still my opinion and belief, that our country was prompted and impelled to independence by necessity, not by choice. They who know how we were then circumstanced, know from whence that necessity proceeded."<sup>2</sup>

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<sup>1</sup> "Franklin's Works," vol. i. p. 278.    <sup>2</sup> "Life of John Jay," vol. ii. p. 212.

A chief American leader of the movement, John Adams, wrote :—

“That there existed a general desire of independence of the Crown in any part of America before the Revolution is as far from the truth as the zenith from the medium. For my own part there was not a moment during the Revolution when I would not have given everything I possessed for a restoration to the state of things before the contest began, provided we could have had a sufficient security for its continuance.”

And Thomas Jefferson said :—

“What eastward of New York might have been the disposition towards England before the commencement of hostilities I know not, before that I never had heard a whisper of a disposition to separate from Great Britain, and after that its possibility was contemplated with affliction by all.”

James Otis, in a pamphlet written in 1766, said of his fellow-colonists :—

“Their loyalty has been abundantly proved, especially in the late war. Their affection and reverence for their Mother Country is unquestionable.”

George Washington, a gentleman of unquestioned honour and veracity, in a letter written in 1774 to an English officer, Captain Mackenzie, said :—

“Although you are taught to believe that the people of Massachusetts are rebellious, setting up for independency and what not, give me leave, my good friend, to tell you that you are abused, grossly abused. This I advance with a degree of confidence and boldness which may claim your belief, having better opportunities of knowing the real sentiments of the people you are among, from the leaders of them, in opposition

to the present measures of the administration, than you have from those whose business it is not to disclose truths but to misrepresent facts, in order to justify to the world as much as possible their own conduct. Give me leave to add, and I think I can announce it as a fact, that it is not the wish or interest of that government, or any other upon this continent, separately or collectively, to set up for independence; but this you may at the same time rely on, that none of them will ever submit to the loss of their valuable privileges, which are essential to the happiness of every free state, and without which life, liberty, and property are rendered totally insecure.”<sup>1</sup>

In May 1775 Washington met a clergyman, the Rev. Jonathan Boucher, in the middle of the Potomac River. As their boats crossed, Mr. Boucher warned Washington that he was pursuing a course which would lead to complete separation from England. Washington said: “If you ever hear of my joining in any such measures you have my leave to set me down for everything wicked.”<sup>2</sup> Nothing ripens ideas so quickly as war.

Thomas Paine said that when he first arrived in America in 1774 he found an “obstinate attachment” to Britain: “it was at that time a kind of treason to speak against it.” “Independence was a doctrine scarce and rare even towards the conclusion of the year 1775.”<sup>3</sup>

To the same effect were the replies made by Richard Penn in his examination before the House of Lords in

<sup>1</sup> Sparke's “Life of Washington,” vol. i. p. 131.

<sup>2</sup> *Notes and Queries*, Eng. Series, 3 and 5

<sup>3</sup> Moncure Conway's “Life of Thomas Paine,” vol. i. p. 56, &c. Paine did his best to shake the obstinate attachment by his vigorous pamphlet, “Common Sense,” published in the spring of 1776. It had a huge sale, and produced much effect.

November 1775. He had been Governor of Pennsylvania, and had left Philadelphia in the preceding July.

*Q.* Are you personally acquainted with many of the members of the Congress?

*A.* I am acquainted with almost all the members of the Congress.

*Q.* Do you think they levy and carry on this war for the purpose of establishing an independent empire?

*A.* I think they do not carry on this war for independency. I never heard them breathe sentiments of that nature.

*Q.* For what purpose do you believe they have taken up arms?

*A.* In defence of their liberties.<sup>1</sup>

The evidence supports that which was said in the address of the first Congress to the people of Great Britain. "You have been told that we are seditious, impatient of government, and desirous of independence. Be assured that these are not facts but calumnies."

But those who commented critically in England upon this declaration said, and said with truth: "The Congress have declared in general terms that they did not aim at independence. But if we examine their particular claims, and compare them with this general assertion, we shall find that the dependence which they would acknowledge will virtually amount to little more than a nominal obedience to whoever sits upon the throne, and very nearly a renunciation of the jurisdiction of the British Legislature. . . . In a word, the question is no longer confined to any particular exer-

<sup>1</sup> "Parliamentary History," November 1775.

cise of the authority of Great Britain, but extended to the very being of the sovereignty itself.”<sup>1</sup>

Here, indeed, was the very heart of the question. By denying, one after another, the legitimacy of particular acts done by the British Parliament the Americans, who certainly started with no such theory, had virtually been driven to adopt very nearly the view of the practical relations of a self-governing colony to the Mother Country which all Englishmen now hold. It was then beyond the imagination of the time, and in conflict with the whole political and commercial colonial theory. In all matters of taxation, customs as well as internal, and in all legislation regarding her internal affairs, the modern colony is really, if not in absolute theory, sovereign, subject to a veto by the Imperial Government which is very rarely used. The modern colony is a distinct State under the same Crown. But not then, and not till long afterwards, was it perceived that this free and loose relation might be consistent with a permanent connection of the countries. “I doubt,” wrote Governor Hutchinson in 1769, “whether it is possible to project a system of government in which a colony 3000 miles distant from the parent State shall enjoy all the liberty of the parent State.” Most Englishmen then, and for long afterwards, were of the same opinion. Even then, however, a few clear-sighted men saw that there was no other solution of the question except either this, or representation of America in the Imperial Parliament.

One of these men who saw the logical end of the movement was the leading Virginian, Thomas Jefferson. He says, in his Memoirs, that he drafted

<sup>1</sup> Summary of Debates of 1775-76 in “Annual Register,” vol. xix. p. 61.



instructions to be given to the delegates sent by his colony to the Congress of 1774. They were intended to form the basis of a manifesto by the Congress :—

“In this I took the ground that from the beginning I had thought the only one orthodox or tenable, which was, that the relation between Great Britain and those Colonies was exactly the same as that of England and Scotland after the accession of James and until after the Union, and the same as her present relation with Hanover, having the same executive chief, but no other necessary political connection. . . . In this doctrine, however, I had never been able to get any one to agree with me but Mr. Wythe. He concurred in it from the very first dawn of the question : what was the political relation between us and England ? Our other patriots, Randolph, the Lees, Nicholas, Pendleton, stopped at the half-way house of John Dickenson, who admitted that England had a right to regulate our commerce, and to lay duties on it for the purposes of revolution, but not of raising revenue.”

Jefferson's view was that the original Colonists had founded new and distinct States in America, subject to the British Crown, but not to the British Legislature. Accordingly his draft instructions contained such passages as these :—

“One free and independent Legislature hereby (by the Act suspending the New York Assembly) takes upon itself to suspend the powers of another, free and independent as itself. . . . Not only the principles of common-sense, but the common feelings of human nature must be surrendered up, before his Majesty's subjects here can be persuaded to believe that they hold their political existence at the will of a British Parliament.”

And Jefferson proposed that the king should be

thus addressed, rather rhetorically, in the peroration to this document :—

“No longer persevere in sacrificing the right of one part of the Empire to the inordinate desires of another, but deal out to all equal and impartial right. Let no Act be passed by any one Legislature which may infringe on the rights and liberties of another. This is the important post in which fortune has placed you, holding the balance of a great, if a well-poised, Empire.”

Even at that late date in the quarrel Jefferson could not obtain acceptance for so large a claim from his American colleagues. The actual address adopted by Congress was couched in much more cautious terms.

John Adams, in his diary, has left a lively and amusing account of the perplexity of the American leaders in framing their manifesto. One is not often admitted so frankly into the secret of the manufacture of a public document. The Congress of 1774 appointed a committee to draw up a declaration of rights. One difficult question upon the threshold of this proceeding was, “Whether we should recur to the Law of Nature as well as to the British Constitution and our American charters and grants.” Mr. Galloway and Mr. Duane were (like true Englishmen) for excluding the Law of Nature; “but,” says Adams, “I was very strenuous for retaining and insisting on it, as a resource to which we might be driven by Parliament much sooner than we were aware.” John Adams evidently perceived the weakness of the case if it depended upon documents and legal principles as hitherto recognised, and wished to hold in reserve as a final argument the right of every nation to govern

itself, according to that mysterious code, the Law of Nature. He goes on to say: "A still more difficult point was, 'What authority we should concede to Parliament'?" After long discussions a sub-committee was appointed to draft the document. "After several days' deliberations we agreed upon all the articles excepting one, and that was the authority of Parliament, which was indeed the essence of the whole controversy. Some were for a flat denial of all authority, others for denying the power of taxation only; some for denying internal, and admitting external taxation. After a multitude of motions had been made, discussed, negatived, it seemed as if we should never agree upon anything." At this critical point—how well one can imagine the scene—Mr. John Routledge, of Carolina, "addressing himself to me, was pleased to say, 'Adams, we must agree upon something; you appear to be as familiar with the subject as any of us; and I like your expressions—'*The necessity of the case,*" and "*Excluding all ideas of taxation, external and internal*"; I have a great opinion of that same idea of 'necessity of the case,' and I am determined against all taxation for revenue. Come, take the pen, and see if you can't produce something that will unite us.'" Thereupon Adams took a sheet of paper and drew up an article, which ran thus:—

"From the necessity of the case, and a regard to the mutual interest of the countries, we cheerfully consent to the operation of such Acts of the British Parliament as are *bonâ fide* restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole Empire to the Mother Country and the commercial

benefits of its respective members, excluding every idea of taxation, internal or external, for raising a revenue on the subjects in America without their consent."

"When this proclamation was read," says John Adams, "I believe not one of the Committee was fully satisfied with it, but they all soon acknowledged that there was no hope of hitting on anything in which we could all agree with more satisfaction." And so the article stood, and was unaltered either in the main Committee or in Congress. The whole proceeding, with its shyness of sweeping general principle, is characteristically English. One can understand the feelings of the French gentleman who came to fight for the Americans, and wrote home in disgust that there was more enthusiasm for *La Liberté* in a single café at Paris than there was in the whole of America.

That almost too logical-minded American, Benjamin Franklin, saw early in the dispute that, as ideas then stood, it was impossible to find a *via media* for the case of his countrymen. He states his view thus, in a letter written to America in the spring of 1770 from London :—

"That the Colonies originally were constituted distinct States, and intended to be continued thus, is clear to me from a thorough consideration of their original charters and the whole conduct of the Crown and the nation towards them until the Restoration. Since that period the Parliament has usurped an authority of making laws for them which before it had not. We have for some time submitted to their usurpation, partly through ignorance and partly through our weakness and inability to contend.

“In the meantime, I could wish that such expressions as the ‘supreme authority of Parliament,’ ‘the subordination of our Assemblies to Parliament,’ and the like, which in reality mean nothing if our Assemblies, with the king, have a true legislative authority—I say I could wish that such expressions were no more seen in our public pieces. They are too strong for compliment, and tend to confirm a claim of subjects in one part of the king’s dominions to be sovereigns over their fellow-subjects in another part of his dominions, when in truth they have no such right, and their claim is founded only in usurpation, the several States having equal rights and liberties, and being only connected, as England and Scotland were before the Union, by having one common sovereign, the king.”

This kind of doctrine, he adds, “the Lords and Commons over here would deem little less than treason against what they think their share of sovereignty over the Colonies.”

Again, in a letter to a French friend, Mr. Dubourg, dated 2nd October 1770, Franklin says:—

“We of the Colonies have never insisted that we ought to be exempt from contributing to the common expenses necessary to support the prosperity of the Empire. We only assert that, having Parliaments of our own, and not having representatives in that of Great Britain, our Parliaments are the only judges of what we can and what we ought to contribute in this case, and that the English Parliament has no right to take our money without our *consent*. *In fact, the British Empire is not a single State; it comprehends many.* And though the Parliament of Great Britain has arrogated to itself power of taxing the Colonies, it has no more right to do so than it has to tax Hanover. We have the same king, but not the same legislature.”

Here Franklin touched the real issue. The claim of the British Parliament rested on the idea that the British Empire was one State, not an union of many. We have seen that George Grenville's last advice to George III. was to be persuaded by no man to let a distinction be drawn between his British and American dominions.

Four years later Franklin published his view in the pamphlet which he wrote defending his conduct in the matter of the Hutchinson letters. He argued that when the first Puritan settlers went to America they did not carry with them the statutes already existing, because if so, they would have been subject to that very ecclesiastical law in order to escape which they emigrated; but that they took with them, "by compact," their allegiance to the Crown and a natural legislative power for making for themselves, with the king's assent, a new body of laws. "Hence, they became distinct States under the same prince, united as Ireland is to the *Crown*, but not to the *Realm*, of England, and governed each by its own laws, though with the same sovereign, and having each the right of granting its own money to that sovereign."

"At the same time," he added, "I considered the king's supreme authority over all the Colonies as of the greatest importance to them, affording a *dernier ressort* for settling all their disputes, a means of preserving peace among them with each other, and a centre in which their common force might be united against a common enemy."<sup>1</sup>

Or, as he concisely expressed his view in a letter of a later date: "From a long and thorough consideration of the subject, I am indeed of opinion that the Parlia-

<sup>1</sup> "Franklin's Works," vol. iv. p. 407.

ment had no right to make any law whatsoever binding on the Colonies; that the King, and not the King, Lords, and Commons collectively, is their sovereign; and that the King, with their respective Parliaments, is their only legislator."

These views were irreconcilable with the reigning English doctrine that the Colonies were an integral part of the realm, and that in one realm there could be but one sovereign legislature. To Englishmen, immersed in the old colonial theory, there seemed to be no substantial difference between Franklin's conception and the complete independence of the Colonies. Lord Mansfield, commenting in the House of Lords (7th February 1775) on Franklin's pamphlet, said:—

"One of the most able American writers, after the fullest and clearest investigation of the subject, at last confesses that no medium can possibly be devised which will exclude the inevitable consequence of either system absolutely prevailing; for, take it upon which ground you will, the supremacy of the British Legislature must be complete, entire, and unconditional, or, on the other hand, the Colonies must be free and independent."

A Captain Hervey, speaking in the House of Commons in 1775, puts thus the dilemma which was puzzling honest Englishmen: "Either the legislative power of a kingdom has authority over all its dominions, or it has none over any part of them."

Or, as King George III. concisely put it: "We must either master them (the Colonists) or totally leave them to themselves and treat them as aliens."<sup>1</sup>

Most Americans, fully sharing in the Anglo-Saxon veneration for precedent, felt bound to accept such

<sup>1</sup> "Correspondence George III.," vol. i. p. 216 (Nov. 1774).

exercises of power in America by the British Legislature as had been allowed for many years to pass unresisted. This much embarrassed their logical position, because they could not give a sound reply to such questions as, "What difference is there in principle between port duties and internal taxation, or between Acts regulating American manufactures, and Acts providing for the lodging of troops?" "How can it be that a supreme Legislature has power to do some things and not others?" Franklin thought that the only tenable position was to treat such previous actions on the part of the British Legislature as "usurpations" affording no precedent. "In the beginning it was not so."<sup>1</sup>

Franklin's view for a long time was that a solution might be found in the representation of America in the British Parliament. But a necessary step precedent to this legislative union was, he thought, that Great Britain should recognise the existing independence for all local affairs of the Americans. He wrote as follows to Lord Kames on 11th April 1769:—

"It becomes a matter of great importance that certain ideas should be formed on solid principles both in Britain and America of the true political relation between them, and the mutual duties belonging to that relation. . . . I am fully persuaded

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<sup>1</sup> Franklin's contention that previous undoubted acts of authority on the part of the British Parliament with regard to America were "usurpations," may be compared with the assertions made by the English Reformers, that a long series of previous acts of authority in England by the See of Rome were usurpations. In both cases the invention was necessary in order to maintain the new claim of freedom without injuring the respect to precedent. It was (like the alleged abdication of James II. in 1688), a political fiction, used to surmount an otherwise insurmountable difficulty. In many ways the breach of the American Colonies with the British Empire may be profitably compared with the breach between the Provinces of Canterbury and York and the Imperial See of Rome.



with you that a consolidating union by a fair and equal representation of all parts of the Empire in Parliament is the only firm basis on which its political grandeur or prosperity can be founded. Ireland once wished it, but now rejects it. The time has been when the Colonies might have been pleased with it; they are now indifferent about it, and, if it is much longer delayed, they will refuse it. But the pride of this people cannot bear the thought of it, and therefore it will be delayed. Every man in England seems to consider himself as a piece of a sovereign over America; seems to jostle himself into the throne with the king; and talks of *our subjects in the Colonies*.<sup>1</sup> The Parliament cannot well and wisely make laws suited to the Colonies without being properly and truly informed of their circumstances, abilities, temper, &c. This it cannot be without representatives from thence; and yet it is fond of this power, and averse to the only means of acquiring the necessary knowledge for exercising it; which is desiring to be *omnipotent* without being *omniscient*.”<sup>2</sup>

In the same year, 1767, Governor Pownall, writing to Franklin, mentioned an objection which was made to the plan, a favourite one with himself, of American representation in the Imperial Parliament, viz., that in that case there must be given to the Americans equal trade and manufacturing advantages. In that case the profits of trade and commerce might go to America, and consequently “the balance of the power of Government, although still within the realm, will be locally transferred from Great Britain to the Colonies,

<sup>1</sup> In another letter Franklin says: “Nothing is more common here than to talk of the ‘sovereignty of Parliament,’ and the ‘sovereignty of the nation’ over the Colonies.” And again: “This country pretends to be collectively our sovereign.”

<sup>2</sup> “Franklin’s Works,” vol. vii. p. 328.

which consequence, however it may suit a citizen of the world, must be folly and madness to a Briton."

Franklin replied, on the new principle as yet understood by few but Adam Smith, whose great work had not yet appeared, that, if the Colonies were naturally fitter for a particular trade than Great Britain, they ought to have it, and Britain should apply itself to that for which it is more fit. "The whole Empire is a gainer." He went on to say: "The government cannot long be retained without an union. Which is best (supposing your case) to have a total separation or a change of the seat of government?"<sup>1</sup>

In a letter to his son, 13th March 1768, Franklin said that he could not see clearly an intelligible *via media* between the positions that "Parliament has a power to make *all* laws for us, and that Parliament has power to make *no* laws," and he thought that the arguments for the latter position were the more numerous and weighty.

"Supposing that doctrine established, the Colonies would then be so many separate States, only subject to the same king, as England and Scotland were before the Union. And then the question would be whether an union like that with Scotland would or would not be advantageous to the *whole*. I should have no doubt of the affirmative, being fully persuaded that it would be best for the *whole*, and that though particular parts might find particular disadvantages in it, they would find greater advantages in the security arising to every part from the increased strength of the whole. But such union is not likely to take place while the nature of our present relation is so

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<sup>1</sup> "Franklin's Works," vol. vii. p. 374.

little understood on both sides of the water, and sentiments concerning it remain so widely different.”<sup>1</sup>

Some English statesmen at this time were not indisposed towards the idea of American representation in Parliament, but they looked at it from a different point of view. To Franklin such an arrangement appeared in the light of an union between previously independent legislatures of distinct States, exactly like that between England and Scotland. To Englishmen it appeared as an extension of representation to parts of the realm not yet directly represented in Parliament—a Reform Bill. The important practical consequence from Franklin’s view was that until such union the British Legislature had no right to tax or legislate for Americans. According to the English view it had the right. The following observations, in a letter written on 17th July 1768 by Mr. George Grenville to Governor Pownall, show this view of the matter:—

“You are no stranger to the declarations I repeatedly made in the House at the time when the Repeal of the Stamp Act was agitated, that if an application to Parliament to grant America a competent number of representatives to sit in the House of Commons were properly made by the Colonies to Parliament, in the same manner as those which were made from Chester and Durham and probably from Wales, it would in my opinion be entitled to the most serious and favourable consideration. I continue still in the same sentiments, but I am much afraid that neither the people of Great Britain nor those of America are sufficiently apprised of the danger which threatens both from the present state of things to

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<sup>1</sup> “Franklin’s Works,” vol. vii. p. 390.

adopt a measure to which both one and the other seems to be indisposed. Some of the Colonies, in their address to the Crown against some late Acts of Parliament, have expressly disclaimed it, and I do not think it has been kindly received in Great Britain. . . . The fullest conviction of its necessity, and the hearty concurrence both of the Government and the people are indispensably necessary to set so great a machine in motion as that of uniting all the outlying parts of the British dominions in one system. As to what personally relates to me, I have done my duty by endeavouring to assert the sovereignty of the king and Parliament of Great Britain over all the dominions belonging to the Crown, and to make all the subjects of the kingdom contribute to the public burdens for their own defence, according to their abilities and situation.”<sup>1</sup>

On Franklin's theory an Union Act, according to the Scottish precedent, would have had to be passed by each Assembly in America, as well as by the British Parliament. According to Grenville all that was necessary was an Act passed in London.

Apart from this divergence, it does not seem likely that the great questions at issue would have been successfully solved by the presence of a small number of colonial representatives in the British House of Commons. Burke considered the scheme a wild one, a scheme of “visionary union,” and Pownall, in his book on the British Colonies, analysed some very strong objections felt on both sides of the Atlantic to the plan of which he himself was so strong an advocate. The British, he says, objected to the scheme as *unnecessary*, because the power of Parliament already extended to all cases ; as *inexpedient*, because union would extend

<sup>1</sup> “Grenville Correspondence,” vol. iv. p. 317.

trade privileges to the Colonies, and as *dangerous*, because it might lead to the eventual removal of the seat of Empire to America. The Americans also thought that legislative union would be unnecessary, inexpedient, and dangerous because (1) they had already sufficient legislatures of their own; (2) if the Colonies were so united to England they would share the burden of British taxes and debt; (3) representatives in England would be too far from their constituents, and the "will of the Colonies would therefore be transferred out of their power and involved in that of a majority in which the proportion of their representatives would hold no balance."

There was a good deal to be said both for the American and the British third objection.

On the whole it seems unlikely that when two countries are so far apart as England and America, a single legislative assembly can be constituted from both to control all the affairs, domestic and foreign, of the whole Empire. This does not affect the question, yet unsolved, whether it would not be possible to form a distinct federal legislature and administration, above the heads of the local legislatures, both British and colonial, to deal with a specified class of affairs common to the whole Empire, such as foreign and commercial policy, naval and military affairs, and imperial finance. But this system, even now, is contemplated as possible by few; in the eighteenth century it was beyond the reach of the wildest political speculation. It is, perhaps, like a shore approached by a ship. Now some on the masthead first see it dimly; an hour ago no one on the ship could see it at all.

It is worth while, before ending with Franklin, to

contrast his views with those of the Englishmen most favourable to the American cause. Burke, in his magnificent letter to the Sheriff of Bristol in 1777, said :—

“I am charged with being an ‘American.’ If warm affection towards those over whom I claim any share of authority be a crime, I am guilty of this charge. But I do assure you that if any one man lived more zealous than another for the supremacy of Parliament and the rights of this imperial crown, it was myself.”

He went on to say :—

“When I first came into a public trust I found your Parliament in possession of an unlimited legislative power over the Colonies. I could not open the statute-book without seeing the actual exercise of it, more or less, in all cases whatsoever. This possession passed with me for a title. It does so in all human affairs. No man examines into the defects of his title to his paternal estate, or to his established government.

“Indeed, common-sense taught me that a legislative authority, not actually limited by the express terms of its foundation or by its own subsequent acts, cannot have its powers parcelled out by argumentative distinctions, so as to say that here they can, and there they cannot bind. Nobody was so obliging as to produce to me any record of such distinctions, by compact or otherwise, either at the successive formation of the several Colonies, or during the existence of any of them.”

Burke held that this complete, undivided, and indivisible sovereignty existed, and that occasions for its exercise in the interest of the “peace and union of the Colonies amongst themselves, as well as for their perfect harmony with Great Britain” might well

arise. But he thought that, as in many other cases, there should be the "greatest reserve in its application, particularly in those delicate points, in which the feelings of mankind are the most irritable." Burke illustrated his position by the instance of the royal veto upon legislation, the exercise of which, he said, "is wisely forborne." "Its repose may be the preservation of its existence, and its existence may be the means of saving the Constitution itself, on an occasion worthy of bringing it forth."

Lord Chatham's intellectual vision was less clear and strong than that of Burke, but he took much the same line. The Americans, he said in 1770, "must be subordinate in all laws relating to trade and navigation especially. This is the Mother Country—they are the children; they must obey and we prescribe. It is necessary, for in these cases between two countries so circumstanced as these two are, there must be something more than connection, there must be subordination, there must be obedience, there must be dependence."

Very few Englishmen would have questioned in 1770 the doctrine so laid down by Lord Chatham. But, in Franklin's opinion, the Navigation Laws were no more properly applicable to the Colonies than laws passed by the English Parliament before the Union were applicable to the kingdom of Scotland. They were but usurpations erroneously acquiesced in. In 1770 most Americans swayed by tradition would still have accepted the view of Lord Chatham rather than that of Franklin, but they were beginning unconsciously to move towards the position of the latter, driven by the logic of their reasons against taxation and other recent legislative encroachments of the British Parliament,

and stimulated by the practical inconvenience due to the commercial system.

In spite of all drawbacks Franklin thought, as late as 1773, that the existing union between the countries was of advantage to both, and might long, if not for ever, continue if England would but abate her pride and temper her policy, and if the Colonists would be patient with the infirmities of their "aged parent" while asserting their privileges and declaring that they intended at the proper time to vindicate them. "We wish it, as we may endeavour it, but God will order it as to His wisdom shall seem most suitable."<sup>1</sup> It was not to be. The divergence between the British idea and the American idea of the relations between Great Britain and the Colonies was too great. Even if, before 1775, the obnoxious tax upon tea had been repealed, there is not much reason to think that the collision could have been permanently averted. The question of the tea-tax was the most immediate cause, but the conflict, ultimately settled by the sword, was inherent in the whole situation. Two opposite and inconsistent ideas were in the field, that of Imperial Dominion as it was then understood in England, and that of Colonial Freedom as it was then understood in America.

The contradiction could only be clearly understood by the few men who at once had experience of the ideas regnant on both sides of the Atlantic, and had minds with which to think. One of these men was Sir Francis Bernard, who was Governor of Massachusetts Bay in the years which immediately preceded and followed the momentous Stamp Act, that first match which set fire to the heaped up

<sup>1</sup> Letter of July 7, 1773: "Works," vol. iv.



materials for a conflagration. He said, in a letter written to a friend in England in 1765:—

“It is my opinion that all the political evils in America rise from the want of ascertaining the relation between Great Britain and America, so very repugnant and contradictory to each other. In Britain the American Governments are considered as corporations empowered to make bye-laws, existing only during the pleasure of Parliament, who hath never yet done anything to confirm their establishments, and hath at any time a power to dissolve them. In America they claim to be perfect States, no otherwise dependent upon Great Britain than by having the same king; which, having complete legislatures within themselves, are no way subject to Great Britain, which, in such instances as it has heretofore exercised a legislative power, has usurped it.”

And again he wrote:—

“The patchwork government of America will last no longer. The necessity of a parliamentary establishment of the Governments of America upon fixed constitutional principles is brought on with a precipitation which could not have been foreseen but a year ago, and is become more urgent by the very incidents which make it more difficult.”

Sir Francis Bernard, while he was a Governor, could not be a public advocate of his opinions. But he wrote a paper called “Principles of Law and Polity applied to the Government of the British Colonies in America,” in 1764, and sent it to a few influential persons in England, who probably put it into the drawers of their respective writing-tables and let it sleep there. At a later time it was published as a pamphlet. Bernard’s idea was that an Act of Parlia-

ment should be passed regulating the whole constitutional position, that the Americans should be given representatives in the Imperial Parliament, that the Colonies in America should be consolidated and divided up into a smaller number of sufficiently large provinces, each with a Government and Legislature of its own, fully recognised as such, for the conduct of all domestic affairs.

The position was equally clearly seen by Governor Pownall, who had the same experience of both sides of the Atlantic and power of observing and reasoning as Bernard. "Parliament," he said, writing in 1768,<sup>1</sup> "has by a solemn Act declared that it hath a right to make laws which shall be binding upon the people of the Colonies, subjects of Great Britain, *in all cases whatsoever*, while the Colonists say, *in all cases which can consist with the fundamental rules of the Constitution*, by which limitation they except the case of taxation where there is not representation."

And he adds :—

"When contrary propositions are alternately brought forward by the representatives of two peoples as the avowed principles of their respective constituents; when an inferior government, which invariably acknowledges its dependence on a superior and supreme government, thinks it hath a right to call into question some exertions of power in that government by rules which limit the extent of the power of that government, it is absolutely necessary either to decide such questions or to give such explanations of the matter that it may cease to be a question, for so long as it continues in doubt the parties will alternately charge each other with arbitrary principles and a spirit of sedition, with tyranny and with rebellion."

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<sup>1</sup> In his book on the "British Colonies."

Pownall poses as the question at issue :—

“How far the Colonies are to be governed by the rigour of external principles, by the supreme superintending power of the Mother Country; how far by the rigour of internal principles, of their own peculiar body politic. And what ought to be the mode of administration by which they are to be governed in their legislative, executive, judicial, and commercial departments, in the conduct of their money and revenues, in their power of making peace and war.”

In short, the whole problem of the relation of a colony to the Mother Country, in such a way as to reconcile the theoretic claim of the Imperial Parliament to supremacy with the practical autonomy of the Colonies, which has since then been slowly worked out, was presented for immediate solution to a generation insufficiently equipped by experience or reflection to solve it.

Pownall himself, who had lived in America as well as in England, and studied history, and thought independently, did strike upon the true solution. He held that a colony was sovereign as to its internal affairs, and those only. “It is, so far as respects its own jurisdiction within its own community, national though not independent. It cannot be independent because, so far as it is a part of the whole Empire of Great Britain, it is subordinate.” Colonists, he maintained, had a right to political liberty “as far as is consistent with the vital unity, efficiency, and *salus suprema* of the *imperium* of the sovereign State.” They had a right to enjoy within the limits of their internal affairs “a free government of the like rights, jurisdictions, and pre-eminences as they did enjoy within the State from whence the colony emigrated.

They have the right to enjoy the like power of reasoning and will in a similar legislature ; a like judicature, and like executive powers so far as respects their interior rights, within the bounds of their corporation, as the Government of the Mother Country hath within its realm. In short, the colony has a right, as a politically free being, to all those internal powers which are essential to its being a free agent." All outside this sphere belonged, he thought, to the sovereign power of the Mother Country, which could also, in the last resort, intervene in the domestic affairs of a colony. The British Government was supreme except in so far as it was limited by its own creation of free political communities, and the Colonies within their own sphere were sovereign or free, except to act in a way opposed to their due subordination to the imperial power.

All this is now dogma universally accepted, but then was apparent to very few. We now believe that the Imperial Parliament should reign but not govern, should retain and hold in reserve the supreme sovereign power in all matters, internal as well as external, even in taxation, but should never (or except in the rarest emergencies) exercise it with regard to the internal affairs of a self-governing colony. This idea, this true way of reconciling *imperium* with *libertas*, then presented itself only to a few superior minds like that of Edmund Burke, who, because he could see, could also foresee. To the vast majority of minds this conception was then as impossible as the modern conception, one very similar in its nature, of the relations between the royal and popular power, was to minds in the reign of Charles I. But just as there were theories clear-cut, though not fulfilled by time, in the minds of a few men like

Strafford on the one side and Henry Vane on the other in the seventeenth century, so in the eighteenth there were clear-cut theories in the minds of the few like George Grenville on the one side and Franklin on the other. By the use of abstractions, used as flags, such as the words "sovereignty" and "liberty," the misty-minded many were rallied by the clear-minded few to the sides whereto their surroundings, interests, prejudices, and proclivities naturally swayed them. "Men," said Napoleon, "are led like sheep by bell-wethers." Assertion of authority led to resistance, resistance to the further assertion of authority, passion kindled passion, pride resentment, and the muskets went off, as it were, by themselves.

In studying a great event of this kind one is brought to see the shallowness of blaming too much individual statesmen or parties. One sees that the links of the chain are wrought by men on both sides, who firmly believe in the justice of their cause, and are acting in what seems to them to be the discharge of their duty. It is because we see things now by the light of experience of the results of their action that they seem to us to be indubitably in the wrong or in the right. Here and there one man makes a better forecast of the future than the rest, but he is powerless, precisely because he is ahead of his generation, and therefore cannot move the governing force of public opinion, controlled, as it ever is, by the "Spirit of the Age." Men seem to be but instruments of that power known to some as Destiny, to others as the Will of God. Strafford is no more morally to blame for aspiring to emulate the policy of Richelieu, whereby France had risen to so high a position, than Hampden is to blame for resisting the ship-tax.

George III. was acting as sincerely and honestly in endeavouring to maintain, as he understood it, British supremacy, as George Washington in defending the liberties of America. The result of the conflict of doctrines, motives, passions, and forces, was on the one side the birth of the American Republic, on the other the rise of those principles upon which now stands the British Colonial Empire.



# PART II

## CANADA





# PART II

## CANADA

### CHAPTER I

#### PERIOD 1763 TO 1840 OF CANADIAN HISTORY

WHEN the British Government acknowledged the independence of the United States at the Treaty of Versailles in 1783, the Colonial Empire, as distinguished from the East India possessions, or at least all of it which seemed valuable and glorious, was no more. Australia and New Zealand had not yet been born, those small fragments of South Africa to which Europeans had penetrated belonged to Holland and Portugal. Jamaica and other West Indian islands, the unhealthy slave-trading settlements on the west coast of Africa, and the barren wastes of Canada with a French population of about a hundred thousand at one end of it, were but small consolation for the loss of thirteen Colonies with three millions of people. "The separation," said Flood, the Irish orator, "had swept away most of our glory and our territory, forty thousand lives, and a hundred millions of treasure." The English people fell into a kind of disgust with colonial matters. They were attentive to the development and administration of the Indian Empire, but for the next half-century no colonial affairs, except in connection with the slave question, attracted much attention.

The line of history which connects the colonial affairs of the eighteenth century with the modern Empire is the history of Canada. In Canada two great solutions were slowly worked out: (1) how self-government, so far as relates to internal affairs, as full and free as that existing in Great Britain, could be granted to colonies without severance of the bond uniting them to the Empire; (2) how populations too much divided by race or extent of territory to manage all their affairs in a single legislative assembly could be combined in a federal bond for certain common purposes, while leaving sufficient autonomy to the several provinces.

To show this, it is necessary to give a summary account of the constitutional history of Canada since the annexation. It is not so well known as it should be to most Englishmen.

By the Treaty of Paris, 1763, France ceded to England—already mistress of Newfoundland and Nova Scotia—the provinces of Canada, Cape Breton, St. John's Island, and other islands along the coast line. The French Canadians, then numbering about 65,000 persons, were by the Treaty secured in the possession of their property and the free exercise of their religion. It was, however, at first the intention of the English Government to anglicise Canada as much as possible, and, for one thing, to introduce the whole English law. This design was abandoned when American discontent came to a head, because it was thought still more desirable to secure the loyalty of French Canadians. By an Act passed in the critical year, 1774, the French law was restored in all matters relating to property, criminal law remaining English. The same Act instituted an Administrative Council for the province of Quebec. Its fiscal power was limited to raising

funds for local or municipal purposes, the British Parliament expressly reserving all rights of levying export and import duties. The Act also recognised the Roman Catholic religion in the province—much to the disgust of the Puritan New Englanders—and provided that the Catholic clergy should continue to receive tithes and other dues.

At the close of the American War of Independence many of the loyalists who had during it taken part against their fellow-Colonists, were anxious to leave the States, where they were very badly treated, though not to leave America. A public grant of £4,000,000 was therefore voted for their assistance, and land provided for them in the country between the Ottawa River, the St. Lawrence, and the Lakes. It was estimated that 20,000 loyalists went to Nova Scotia, and 10,000 to this Western Canada or Ontario.

The British Government at this time desired to keep the French and English parts of Canada as distinct as possible, so as to obviate the possibility of any combination against the Crown, like to that which had ended in the independence of the southern colonies.<sup>1</sup>

In accordance with this policy Parliament passed, in the year 1791, the first of the three great Constitutional Acts relating to Canada. At this date the population of the whole country, then so called, amounted to 150,000 persons, of whom about 130,000 belonged to Lower Canada, or Quebec. The Act provided that each of the two provinces should have a Governor of its own, and a Parliament consisting of two houses, viz., an Assembly elected by the people, and a Legislative Council to consist of members nominated by the

<sup>1</sup> Mr. Pitt, in a debate in the House of Commons, distinctly declared this to be the object of the Government.

Governor on behalf of the Crown, and holding their seats for life. Power was also given to the Crown to confer hereditary titles with seats in the Legislative Council. In fact, these second Chambers were intended to resemble the British House of Lords as nearly as circumstances would permit. In Lower Canada the House of Assembly was to have fifty members, and the Legislative Council fifteen; in Upper Canada the Assembly was to have sixteen members, the Council seven.<sup>1</sup>

The Act of 1791 also provided for the support of a "Protestant clergy" in Upper and Lower Canada by the setting apart of a large extent of wild land called the "Clergy Reserves."

This Act of 1791 is important for one reason, because for the first time a real colonial Constitution was made to rest not upon royal charter or grant made by the owner of a concession, but upon an Act of Parliament. Such an Act can be amended or repealed by the Legislature which made it. Thus recognition was given to the principle of the supremacy of the Imperial Parliament for which England had contended during the American troubles. It could not have been argued with regard to the Canadian Legislatures as Franklin had argued with regard to the American Assemblies, that they were, in and by their origin, entirely independent of the British Parliament.

Between the passing of this Act of 1791 and that of the second great Constitutional Act in 1840, by which the two provinces were united in a legislative union, lies a distinct period of Canadian history. Its political interest is chiefly in the Lower or French province.

The statesmen who passed the Act of 1791 did

<sup>1</sup> Burke thought this constitution too democratic; Fox thought it too aristocratic; and their famous final breach took place in this debate.

not intend—as would those who should now grant a full Colonial Constitution—that the whole local government should practically pass into the hands of a committee of the majority of the popular Assembly. Even in the United Kingdom this principle of administration was by no means clearly established until after the first Reform Bill, and no one in 1791, or long afterwards, supposed that it could be accepted in the case of a colony compatibly with the maintenance of imperial authority and connection.

The popular Assembly in Lower Canada was naturally from the first under the control of French Canadian leaders, but for some time it had little real power. The public expenditure was not very large, and was almost entirely defrayed out of the customs duties, appropriated in 1774 by Act of Parliament to the Home Treasury for Canadian purposes, and by some Crown revenue derived from lands. By these means the Crown could carry on the government without securing the assent of the representative body either to its policy or to the persons by whom their policy was to be administered. The Government held, in fact, the same position with regard to the Assembly as those held by the Crown in England when it could provide for normal administration from its hereditary revenue, and was not obliged to resort to Parliament except for extraordinary grants. But, as in England, so in Canada, this state of things was brought to an end by the natural increase of the cost of government. Expenditure was swelled by the war of 1812–1814 against the United States and other causes. In 1815 the Assembly offered to take upon itself the whole expenses of Lower Canada. This was at first declined, but subsequently, in 1818, the Government

was induced by its necessities to accept the Assembly's offer to raise additional revenue by fresh taxes. This acceptance was, in the words of Lord Glenelg (in the House of Lords in May 1837), "the first step which put the colonial Assembly in possession of a practical power of exercising the constitutional right which they derived from the Act of 1791."

As time went on a number of British settlers established themselves in the province of Lower Canada. Numerically they were always in a decided minority (reckoned in 1837 at about 150,000 out of a total of 600,000), but they were energetic and enterprising, and much of the wealth, trade, and commerce of the province passed into their hands. In religion, education, character, pursuits, language, and ideas, they were in strong contrast to the Canadian peasant-farmers, and their success and progress aroused the fear and jealousy of the older population. Many of the legislative acts, or refusals to act, of the popular Assembly were, or seemed to be, prejudicial to the interests of the British settlers, and intended to discourage the further progress of British enterprise and population in the province. The Governors naturally sought refuge against French ascendancy in the popular Assembly by composing the second Chamber, or nominated Legislative Council, almost entirely of English, and from the English also they chose their Executive Council. Thus there came to be a dualism in Lower Canada. On one side was the popular Assembly, controlled by French leaders who never held any office, and thus had no experience of practical administration; on the other was the provincial Government, supported and sheltered by the Legislative Council, which threw out, often no doubt very rightly, most of the measures

passed by the other House.<sup>1</sup> This system of government was a great obstacle to the material development of the country, and only intensified and centralised the existing racial divisions, conflicting interests, and animosities.

We have seen that in 1818 the Government, finding that its revenue from the customs duties appropriated in 1774 was inadequate, accepted additional revenue from the Assembly. The Assembly had power to appropriate the revenue thus raised, but had no more power than before over the reserved customs duties. To achieve this control became the great objective of the French party, and they were in this matter supported by a Whig section of the British inhabitants. More than half the representatives of British origin in the House of Assembly were, it is said, in the constant habit of voting with the popular party.<sup>2</sup>

In 1828 the matter was submitted by Mr. Huskisson to the British Parliament, and a Select Committee was appointed to investigate the question. This committee made a report, which was received by the Canadians with much satisfaction, and in the year 1831 every portion of the reserved revenue was abandoned except certain casual and territorial funds. An attempt was made at the same time, in pursuance of a recommendation of the committee, to bring the

<sup>1</sup> When Lord Durham came to inquire into the matter, he thought that many of the measures thus thrown out by the second Chamber were such that "the colony had reason to congratulate itself on the existence of an institution which possessed and used the power of stopping a course of legislation which, if successful, would have sacrificed every British interest and overthrown every guarantee of order and national liberty." One of the measures thrown out by the second Chamber was a Bill for its own abolition, which had the additional demerit that it purported to repeal part of the Act of the British Parliament of 1891, upon which the Canadian Constitution was founded.

<sup>2</sup> See "Annual Register" for 1838, p. 46.



Legislative Council more into harmony with the people by adding to it some acceptable persons. One result of these reforms seems to have been the detachment from the popular party of those British Liberals in the province who had supported it.<sup>1</sup>

In spite of this victory, the most substantial cause of conflict still remained. The Assembly had acquired entire control over public revenues, but had no more voice than before in the choice or designation of the administrators of affairs. "Conciliation," said Lord Glenelg, in his speech in 1837, "was not attended with any good effect on the Assembly, for, in proportion as concessions were made, the Assembly increased in their demands."

The real struggle, that for power, was fought under the cover of innumerable special grievances, into the merits of which there is no need to enter in a study of the general outline of Canadian constitutional history.

In 1833 the Assembly passed a bill granting supplies conditionally. The conditions were refused, and supply failed. In 1834 no supply was granted, and the Assembly passed ninety-two resolutions, virtually forming an impeachment of the Governor. They were transmitted to England, debated in Parliament, and referred to a committee. In 1835 the Assembly for the third time refused supplies. In 1836 a Commission of Inquiry was appointed by the British Government, and, when the Assembly again refused supplies in 1836, they sent in an interim report recommending the repeal of the Act of 1831, and the restoration of the reserved revenue to the Crown. In the same year the Canadian Assembly sent an address to the Governor, Lord Gosford, demanding repeal of the Tenures Act, subversion

<sup>1</sup> Lord Glenelg's speech, 9th May 1837.

of the Land Commission, control over revenue derived from Crown lands (from which the Government, deprived of supplies, derived a scanty sustenance), and that the Executive Council should be made directly responsible to the Assembly, "conformably," as they said, "to the principles and practice of the British Constitution."

This last point was the one most to the root of the question, and it was hotly debated in the debate in the British Parliament at the beginning of 1837. Lord Stanley, for the Tories, attacked the demand that "the Executive Council should be rendered directly responsible to the House of Assembly." Here, he said, was confounded the wide and manifest distinction between an independent and subordinate State. The king was subordinate to no one—the king's Ministers were responsible for him to the country; but what was the situation of a governor of a colony? He was responsible to the Crown and the Government here, and it was proposed to make him responsible to the House of Assembly; though how he was to act under this double and frequently conflicting responsibility was not clearly explained. "The question then," said Lord Stanley, "was no longer one of expediency but of empire. If it were proposed to give the colony up, let the proposition be openly and plainly stated and decided upon accordingly. If it were desirable to retain the colony, a project which would at once render nugatory on our part all control over the province, and plunge us into difficulties which could only be escaped from by violence, must not be entertained for a moment."

For the time all parties, except a few Radicals like Roebuck and Hume and O'Connell, agreed with these views, so soon to be discarded, and when Lord John

Russell moved for the Government a resolution that "while it is expedient to improve the Executive Council in Lower Canada, it is unadvisable to subject it to the responsibility demanded by the House of Assembly in that province," his motion was carried by 269 votes to 46.

In August 1837, the Assembly, under the leadership of M. Papineau, for the fifth year in succession refused to grant supplies, and were prorogued. Violent meetings were held, and Lord Gosford dismissed from the militia certain officers who had taken part in them. Upon this the people proceeded to elect officers for themselves, and acts of violence took place. In a despatch of the 2nd September, Lord Gosford said: "It is evident that the Papineau faction are not to be satisfied with any concession that does not place them in a more favourable position to carry into effect their ulterior objects—namely, the separation of this country from England and the establishment of a Republican form of government."

The disturbance of the atmosphere was increased by the violent attacks of the ultra-Tory, ultra-Loyalist, and ultra-Protestant party upon the French Catholics. Orders were made for the arrest, on the charge of high-treason, of several persons in the Montreal district, and the attempt to effect these arrests by means of the military, led to some fighting in the villages of St. Denis and St. Charles. The British loss was about ten men killed and thirty wounded. This petty fighting was the most severe in the disturbances glorified by the name of the Canadian Rebellion.

In these circumstances Lord John Russell, on the 16th January 1838, introduced a Bill for the temporary suspension of the existing Constitution of Lower

Canada, and the vesting of legislative powers in a special Council, pending the result of the investigation which Lord Durham was commissioned to make in Canada with regard to the causes of the difficulty, and to the best future policy.

At this point we may turn for a moment to the history of the province of Upper Canada. In this province no deep division of race and language made a dividing line between parties. Nevertheless a contest had long been carried on presenting many of the external characteristics of that which had been waged in Lower Canada. In Upper Canada, as in Lower, the object of the popular party was to raise the popular Assembly to the position of power occupied by the British House of Commons, and to secure its ultimate control over the Executive Government.

The Upper Province had long been controlled by a group of men, closely resembling the last century Beresford or Ponsonby groups in Ireland, commonly designated the "Family Compact," well organised, holding all the chief offices, and controlling the Executive Council and successive Governors by social and political influences.

"The bench," said Lord Durham's report, "the magistracy, the high offices of the Episcopal Church, and a great part of the legal profession are filled by the adherents of this party; by grant or purchase they have acquired nearly the whole of the waste lands of the province; they are all-powerful in the chartered banks, and, till lately, shared among themselves exclusively all offices of trust and profit. The bulk of this party consists of native-born inhabitants of the colony, or of emigrants who settled in it before the last war with the United States; the principal members

of it belong to the Church of England, and the maintenance of the claims of that Church has always been one of its distinguishing characteristics."

The political battles in Upper Canada were fought largely upon this Church question. By the Constitutional Act of 1791, a certain portion of land in every township was set apart for the maintenance of what, with unhappy vagueness, the framers of the Act called a "Protestant clergy." Under that term the clergy of the Church of England had always claimed the sole enjoyment of this endowment. But a considerable proportion of the population consisted of Scottish Presbyterians, who demanded an equal division between their clergy and that of the Church of England. Other Protestant Dissenters also claimed a share, while many Protestants, together with the Catholics of the province, were in favour of the application of these funds to the general purposes of government or to education. The irritation about this matter seems to have been increased by the assertion by the endowed Anglican clergy of the kind of social and official precedence and position held by clergy of the Established Church in England. The whole issue was embittered, moreover, by the existence of the Orange Association in the province.

The Family Compact were predominant in the Executive and Legislative Councils, but the Assembly usually contained a majority of the opposite party, called the "Reformers." The main object of this group was, to use their own expression, to make the colonial Constitution "an exact transcript" of that of Great Britain; and they desired that the Crown should, in Upper Canada, as at home, entrust the administration of affairs to men possessing the con-

fidence of the Assembly. The long unsuccessful struggle turned the minds of some of the Reformers in the direction of the United States; the ruling connection were able to appeal to the sentiment of loyalty and the fear of separation, and, assisted by Orange violence, won a majority in the Assembly at the elections of 1836. This was followed by Mackenzie's treasonable enterprise, and the outbreak of 1837.<sup>1</sup> The rising was promptly quelled, but met with a great deal of sympathy in the province, petitions for the pardon of two of the leaders, who were executed, being signed by 30,000 of their fellow-countrymen.

<sup>1</sup> Mackenzie took possession of Navy Island, in the Niagara River; held it with a force of 1000 men, and issued a proclamation declaring the whole of Canada to be a Republic.

## CHAPTER II

### LORD DURHAM'S REPORT

SUCH was the state of affairs in Lower and Upper Canada when the Royal Commission was issued on the 31st March 1838, appointing the Earl of Durham to be "Captain-General and Governor-in-Chief in and over each of our provinces of Lower Canada, Upper Canada, Nova Scotia, and New Brunswick, and in and over our island of Prince Edward in North America"; and also "High Commissioner for the adjustment of certain important questions depending in the said provinces of Lower and Upper Canada respecting the form and future government of the said provinces." Lord Durham went out as a temporary Dictator and as a Constitution-maker. His mission and report and the policy founded upon it form a great epoch in the history of the British Colonial Empire.

The statesmen who were at this date in the time of life when convictions have been formed had been brought up under the influence of the ideas which were generated by the loss of the older American Colonies. Englishmen had not at once been taught by this severe lesson to shake off the old colonial theory that colonies existed for the sake of the Mother Country and must be governed from it. But they now thought that if and as soon as a colony became perfectly self-governing it would desire to become independent; that probably it would not be possible

to resist this desire; and that, moreover, it was of doubtful advantage to England to maintain any connection with colonies at all. This view was the old colonial idea tinctured with a new pessimism, the result of the American War of Independence. There was an absence of faith, and therefore of enthusiasm, as to the future of the Colonial Empire.

The low-water mark of this reaction from the disastrous imperial policy of George III. was certainly reached by Jeremy Bentham, who, writing in 1789, laid it down as a fundamental proposition that "it is not the interest of Great Britain to have any foreign dependencies whatever," on the grounds (1) that distant dependencies increase the chance of war; and (2) that colonies are seldom, if ever, sources of profit to the Mother Country. But the feeling continued to exist long after Bentham's time.

In proof of this it is worth while to quote a few passages from the debates in Parliament at the time of these Canadian troubles.

Lord John Russell said, on the 16th May 1836:—

"The House of Assembly of Lower Canada have asked for an elective Legislative Council and an Executive Council which shall be responsible to them, and not to the Government and Crown of Great Britain. We consider *that these demands are inconsistent with the relations between a Colony and the Mother Country*, and that it would be better to say at once, 'Let the two countries separate,' than for us to pretend to govern the Colony afterwards."

These, be it noted, are the words of one bred in the purest Whig principles, and himself a leader of the Reform movement at home. They are inspired by a sentiment like that of a father who might say to his



son : " So long as you continue to live in my house you must be governed by me ; but I do not expect you always to remain at home, and you had better leave at once, if you prefer liberty."

When, on the 16th January 1838, Lord John Russell, as Prime Minister, brought in the Bill to suspend the liberties of Lower Canada, he again referred to the Canadian demand that the Executive Council should be responsible to the Assembly in these terms :—

" I stated that there was one place in which the power of the Executive could be thus entirely controlled, and this was at the seat of the Imperial Government. If the Sovereign of this country were to select those who had the confidence of the Crown, but who possessed none of the confidence of the House of Commons, there must be a speedy change in the administration, and the Constitution could only proceed in consequence of that change. But, in a colony, if the Executive Council are to be named according to the will of the Assembly, there is another question which arises, namely, what is to become of the orders given by the Imperial Government and the Governor of the colony."

Here was the still unsolved problem, how to reconcile colonial liberty with imperial supremacy.

The same speech of the Whig leader contains a passage which gives, unadulterated, the pure commercial theory of the old colonial school. He said :—

" With respect to trade, it has always been admitted that an Imperial Legislature has a right to compel a colony to receive the produce of the Mother Country, and a right to restrict that colony in its commerce with other nations."

That a Whig Premier, in 1838, should still have proclaimed in Parliament the doctrine which largely contributed to our loss of the United States, and nearly brought about the loss of Ireland, is a striking proof of the vitality of deeply-rooted ideas.

The Tory Duke of Wellington expressed the old view more concisely than did Lord John Russell, when in 1840, speaking in the House of Lords, he said: "Their Lordships might depend that local responsible government and the sovereignty of Great Britain were completely incompatible."

The indifference, common at that time, as to the maintenance of the connection with the Colonies appears in many passages. The Radical Roebuck said in the House of Commons on the 14th April 1837: "Whatever may be the course we pursue, the time must inevitably come when our American colonies will become independent States." A very well-informed and distinguished peer, Lord Ashburton, said in the House of Lords in 1840 that, in his opinion, it was useless to keep these Colonies. Lord John Russell, in his speech of 16th January 1838 went, indeed, so far as to say that he did not think that England was ready to abandon North America.

"I do believe that the possession of our Colonies tends materially to the prosperity of the Empire. On the preservation of our Colonies depends the continuance of our commercial marine, and on our commercial marine depends our naval power, and on our naval power mainly depends the strength and supremacy of our arms."

Not a trace here of the imperial *idealism* which has grown up since the day of Lord John. The retention

of the Colonies was merely a matter of material expediency. Lord John went on to say:—

“Although I am not prepared to give *immediate* independence, this I will say, that, if the time were to come at which such an important change might be safely and advantageously made, I should by no means be indisposed to give the 1,400,000 of our present fellow-subjects who are living in the provinces of North America a participation in the perfect freedom enjoyed by the Mother Country. If it were a fit time, if circumstances of all kinds were such as to render such an arrangement desirable, I think that our Colonies might with propriety be severed from us, and formed into a separate and distinct State, in alliance offensive and defensive with this country.”<sup>1</sup>

How impossible it is to imagine a speech in this tone made by Lord Rosebery or Mr. Chamberlain, modern representatives of the Liberal party. But Lord John Russell had been bred in a very different atmosphere, and could not, in 1838, conceive of perfect freedom without severance, or how Canada, while being virtually “a distinct State in alliance offensive and defensive with this country,” could yet remain an integral portion of the Empire.

Sir Wilfrid Laurier, the Dominion Premier, in one of his speeches made in the Jubilee Year of 1897, said “*Canada is a nation.*” Canada is no longer a colonial dependency. It is a distinct State. It is in alliance offensive and defensive with this country. Yet

<sup>1</sup> As late as 1852 Sir Henry Taylor, who was Permanent Under-Secretary for the Colonies, wrote to Lord Grey: “I cannot but regard the North American Provinces as a most dangerous possession for this country, either as likely to breed a war with the United States, or to make a war otherwise generated more grievous and disastrous. I do not suppose the provinces to be useless to us at present, but I regard any present uses not obtainable from them as independent nations as no more than the dust in the balance compared with the evil contingencies.”

it has not ceased to be an integral portion of the Empire. Thus in the case of Canada we have succeeded in reconciling "*Imperium et Libertas*"—autonomy and imperial connection—"res olim dissociabiles."

Lord Durham's report marks the end of the old colonial theory and the triumph of the new idea. It is, therefore, well worth while to examine with care this remarkable State paper.

The troubles both in Lower and Upper Canada appeared to Lord Durham to be due to the absence of a working identity of will between the popular assemblies on the one side, and, on the other, the executive power supported by its nominees in the legislative councils. In Lower Canada there was also the difficulty arising from the presence of two races—one in a great numerical majority, French in origin and language, Roman Catholic in religion, mainly agricultural by occupation in the small farmer or peasant way, poorer and more content, less progressive, ambitious, and enterprising; the other British by origin, Protestant in religion, commercial, or farming on a large scale, far more energetic, restless, and enterprising, and richer. The two races were divided by race, language, religion, occupation, education, tastes, aims, and social differences. The English were irritated by the obstacles to the improvement of trade and commerce which were placed in their way by French jealousy; the French were irritated by the political and economic ascendancy of a minority.

"The ascendancy," wrote Lord Durham, "which an unjust favouritism had contributed to give to the English race in the government and the legal profession, their own superior energy, skill, and capital, secured to them in every branch of industry. They

have developed the resources of the country; they have constructed or improved its means of communication; they have created its internal and foreign commerce. The entire wholesale and a large portion of the retail trade of the province, with the most profitable and flourishing farms, are now in the hands of this numerical minority of the population." The English looked on the French with contempt; the French, as the English economic conquest progressed, saw their rivals with "alarm, with jealousy, and finally with hatred." Intermarriages were rare; there was no combination for public objects of any kind, not even for those of charity. "The only public occasion," said Lord Durham, "on which they ever meet is in the jury-box, and they meet there only to the utter obstruction of justice."

The feeling of hostility between two races thus deeply divided had been rapidly increasing during the years preceding the outbreak of 1837, and was excessively detrimental to the economic progress of the province. The entire want of municipal self-government obliged the English—even in some districts where they were in a majority—to come to the Assembly for every road, or bridge, or canal, or other public work that was needed. Here they encountered every kind of obstacle and delay, until the English inhabitants came to regard the policy of the Assembly "as a plan for preventing any further emigration to the provinces, of stopping the growth of English wealth, and of rendering precarious the English property already invested or acquired in Lower Canada." One is reminded in many ways of the complaints made against the Boer Legislature by the English settlers in the Transvaal. It was in any case difficult for the English minority,

feeling itself superior in political energy and intelligence, to submit to a majority elected by constituents who could not, for the most part, read or write; and when material interests were gravely touched the situation became almost impossible. Thus in the violent contests between the popular Assembly and the Executive Government in the years preceding the insurrection of 1837, the English minority rallied round the Government, supported its claims, called themselves "loyal," and the French, who asserted the rights of the majority, "rebels." The resort to arms and shedding of blood and destruction of property brought these hostile and divided races into fierce collision. Here is the impression made upon Lord Durham's mind by what he saw and heard in the year 1838:—

"It is not difficult to conceive how greatly the evils, which I have described as previously existing, have been aggravated by the war; how terror and revenge nourished in each portion of the population a bitter and irreconcilable hatred to each other and to the institutions of the country. The French population, who had for some time exercised a great and increasing power through the medium of the House of Assembly, found their hopes unexpectedly prostrated in the dust. . . . Removed from all actual share in the government of their country, they brood in sullen silence over the memory of their fallen countrymen, their burnt villages, of their ruined property, of their extinguished ascendancy, and of their humbled nationality. Nor have the English inhabitants forgotten in their triumph the terror with which they suddenly saw themselves surrounded by an insurgent majority, and the incidents which alone appeared to save them from the unchecked domination of their antagonists. They find themselves still a minority in the midst of a hostile and organised people. Apprehensions of secret con-

spiracies and sanguinary designs haunt them unceasingly, and their only hope of safety is supposed to rest on systematically terrifying and disabling the French, and in preventing a majority of that race from ever again being predominant in any portion of the legislature of their province. . . . Never again will the present generation of French Canadians yield a loyal submission to a British Government; never again will the English population tolerate the authority of a House of Assembly in which the French shall possess, or even approximate to, a majority."

Recent events had for the time replaced the ancient antipathy of the French Canadians to the United States by a still stronger antipathy to their Anglo-Saxon fellow-Colonials, and it was agreed by all that an invading American army would, in 1838, have been secure of the co-operation of the whole French population. On the other side, the English population of the provinces were not, after the rebellion, in a loyal mood. They complained of the whole course of policy pursued by the British Legislature and Government, which had, they said, encouraged the mischievous French nationalist pretensions, had been vacillating and inconsistent, had discouraged loyalty and fomented rebellion, and had been founded upon utter ignorance of the real condition of affairs. They went so far as to say that they would not endure being made the sport of parties at home, and that if the Mother Country forgot what was due to the loyal and enterprising men of her own race, they must protect themselves. In the language of one of their advocates, they asserted that "Lower Canada must be English, at the expense, if necessary, of not being British." They hinted that if Canada became part of the United States,

the connection and the consequent immigration from the States would soon establish Anglo-Saxon superiority and bring to an end all French pretensions, and that Canada might then begin to share the amazing progress and prosperity of her American neighbours. If any attempt were made to restore the Assembly with its French majority, it seemed to Lord Durham quite certain that the English Colonists would seek, on any terms, an union with the United States.

One result of all these political troubles and racial animosities was the retardation of economic and material development in British North America.

“It is melancholy,” said Lord Durham, speaking of Lower Canada, “to think of the opportunities of good legislation which were sacrificed in this mere contest for power. No country in the world ever demanded from a paternal Government, or from patriotic representatives, more unceasing and rigorous reforms both of its laws and its administrative system.”

Lower Canada possessed neither municipal institutions, the foundation of Anglo-Saxon progress, nor anything resembling the powerful centralisation of France. It enjoyed neither the advantages of Anglo-Saxon nor of Latin institutions. Its judicial institutions were defective, its land laws uncongenial to progress. While the Assembly and the Executive Government were engaged in a contest for power, they left untouched “those vast and easy means of communication which deserved, and would have repaid, the application of the provincial revenues. The State of New York made its own St. Lawrence from the Erie to the Hudson, while the Government of Canada could not achieve, or even attempt, the few miles of canal and



dredging which would have rendered its mighty rivers navigable almost to their sources."

In Upper Canada, on the other hand, there was much energy, almost too much in proportion to resources, as to public works. The House of Assembly of that province began the great ship canal, called the Cornwall Canal, with a view of enabling ships of considerable size to avoid the Long Sands Rapids, and this work was at a great cost brought near to completion. But the whole of these works, when completed, would be of small value without the execution of similar works on that part of the St. Lawrence River lying between the province border and Montreal. This co-operation the Assembly of Lower Canada refused, or neglected, to give, and at the date of Lord Durham's report the works had consequently been suspended, while the Upper Province was left heavily indebted.

Of all governmental matters in a new country with vast territory and scarce population, each competing with other countries in the endeavour to attract desirable emigrants, the most important is the system for disposing of unoccupied lands. In the United States, since the year 1796, the system had been regulated by a law of Congress applicable to the whole territory. This law rendered acquisition of land easy, and yet, by means of a price, restricted appropriation to the actual wants of the settler, was so simple as to be easily understood, provided for accurate surveys and against needless delays, gave an instant and secure title, and admitted of no favouritism. "That system," said Lord Durham, "has promoted an amount of immigration and settlement of which the history of the world affords no other example," besides producing a steady and increasing revenue to the Federal Government.

In the British American Colonies, on the contrary, there never had been at that date any general and well-designed system of land allotment. Surveys had been inadequate everywhere, boundaries uncertain, delays vexatious, and favouritism prevalent. Everywhere the allotment had erred on the side of profusion, and the Government had alienated much more land than the grantees were able to reclaim. In some of the Colonies it was almost impossible for a person without political influence to obtain any of the public land. The administration of the public lands cost for a long time more than it produced. The market value of land was, as a rule, much higher on the United States side than on the Canadian side of the border line. At the date of the report the price of wild land in Vermont and New Hampshire, close to the line, was five dollars an acre; but similar land in the adjoining British townships was only worth one dollar an acre, and even at that price was often unsaleable. In Lower Canada, one witness declared that there had been no increase in the value of much wild land for twenty years. The superiority of the American system attracted emigration out of Canada into the United States.

The fact was that the general effect of Canadian methods was to place a vast extent of land outside the control of Government, and yet to keep it in a state of wildness. In both Upper and Lower Canada, in Nova Scotia and Prince Edward's Island, the great mass of public lands had been alienated before 1838, either as "Clergy Reserves" under the Act of 1791, or in grants to the loyalists from the United States after the War of Independence, or to discharged soldiers and sailors, executive and legislative councillors, and other political

personages. Families of this kind were frequently not occupants of any part of it, but held it in hopes of a rise in value through increase of population. The Constitutional Act of 1791 had attempted to introduce some limitations as to the dimensions of land grants, but these had been largely evaded. The result of this system of making grants to individuals who were not settlers or cultivators, but merely speculative landholders, was that everywhere there were large blocks of wild land separating the real holdings, hindering the construction of roads, and otherwise defeating the benefits to be derived from concentration of population. Many farms, and even whole townships, had been abandoned on this account. In fact, large parts of these colonies suffered the evils of absenteeism in its worst form. The absentees neither improved the land themselves, nor would they let others improve it.

In 1838 the argument, from the point of view of material interests, in favour of the union of Canada with the Southern Republic was strong. The two sides of the border line presented an instructive and, to an English observer, a mortifying contrast.

“On the American side all is activity and bustle. The forest has been widely cleared; every year numerous settlements are formed, and thousands of farms are erected out of the waste; the country is intersected by common roads; canals and railroads are finished, or in the course of formation; the ways of communication and transport are crowded with people, and enlivened by numerous carriages and large steamboats. The observer is surprised at the number of harbours on the lakes, and the number of vessels they contain; while bridges, artificial landing-places, and commodious wharves are formed in all directions as soon as required. Good houses, warehouses, mills, inns, villages,

towns, and even great cities, are almost seen to spring up out of the desert. Every village has its school-house and place of public worship. Every town has many of both, with its township buildings, its book stores, and probably one or two banks and newspapers; and the cities, with their fine churches, their great hotels, their exchanges, court-houses, and municipal halls of stone or marble, so new and fresh as to mark the recent existence of the forest where they now stand, would be admired in any part of the Old World."

Now for the Canadian picture.

"On the British side of the line, with the exception of a few favoured spots where some approach to American prosperity is apparent, all seems waste and desolate. There is but one railroad in all British America, and that is only fifteen miles long.

"The ancient city of Montreal, which is naturally the commercial capital of the Canadas, will not bear the least comparison in any respect with Buffalo, which is an erection of yesterday. But it is not in the difference between the larger towns on the two sides that we shall find the best evidence of our own inferiority. That painful but undeniable truth is most manifest in the country districts through which the line of national separation passes for a thousand miles. There, on the side of both the Canadas and also of Brunswick and Nova Scotia, a widely scattered population, poor and apparently unenterprising, though hardy and industrious, separated from each other by tracts of intervening forest, without towns and markets, almost without roads, living in mean houses, drawing little more than a rude subsistence from ill-cultivated land, and seemingly incapable of improving their condition, present the most instructive contrast to their enterprising and thriving neighbours on the American side."

One is reminded of the contrast which might have

been drawn between England and Ireland at any time during the last two or three centuries.

It has been pointed out that the entire political independence of each other of two provinces so naturally interdependent as Upper and Lower Canada had impeded the execution of great public works. It also led to difficulties in financial relations. As all over-sea imports into Upper Canada entered through the ports of Lower Canada, the duties levied upon them were collected in the latter province. Upper Canada had naturally claimed a proportion of this revenue, and this proportion was settled from time to time by Commissioners appointed by each province. But, as recently in the case of the financial "ausgleich" between Austria and Hungary, these settlements had given rise to dispute and discontent, and promised to give more. The revenue of Upper Canada being utterly inadequate to its expenditure, that province wished to increase its customs duties. But this could not be done without increasing the taxation of Lower Canada, where the revenue was usually in excess of the expenditure. It was on account of these difficulties that the union of the two provinces was proposed in 1822, and the same reason influenced the people of Upper Canada in 1838, and made them desire an union.

So, then, affairs stood in British North America when the Earl of Durham landed there at the beginning of the year 1838. In Lower Canada the Constitution was suspended. A political struggle had raged for years between, on the one side, the popular Assembly supported by the great majority of the people, and, on the other, the high officials of the Crown supported by the English minority and the second Chamber. This struggle had culminated in

fighting and bloodshed, and a racial animosity closely resembling that which existed in Ireland immediately after 1798. Lord Durham found in both the Canadas, and also in the minor Colonies, Nova Scotia and Prince Edward's Island, a defective constitutional practice which prevented the existence of harmonious working between Government and Assembly, and almost insured discord. Throughout British North America there was neither co-operation for the common good between the different Colonies nor institutions for effecting such co-operation. The result of these causes was stagnation and arrest of economic development, the more evident by reason of the contrast exhibited by the adjoining American States. The magnitude of the interests involved in the right settlement of the question is finely set forth in the following section of Lord Durham's report:—

“On the course which your Majesty and your Parliament may adopt with respect to the North American Colonies will depend the future destinies not only of the million and a half of your Majesty's subjects who at present inhabit those provinces, but of that vast population which those ample and fertile territories are fit and destined hereafter to support. No portion of the American Continent possesses greater natural resources for the maintenance of large and flourishing communities. An almost boundless range of the richest soil still remains unsettled, and may be rendered available for the purposes of agriculture. The wealth of inexhaustible forests of the best timber in America, and of extensive regions of the most valuable minerals have as yet been scarcely touched. Along the whole line of sea-coast around each island, and in every river, are to be found the greatest and richest fisheries in the world. The best fuel and the most

abundant water-power are available for the coarser manufactures, for which an easy and certain market will be found. Trade with other Continents is favoured by the possession of a large number of safe and spacious harbours; long, deep, and numerous rivers and vast inland seas supply the means of easy intercourse; and the structure of the country generally affords the utmost facility for every species of communication by land. Unbounded materials of agricultural, commercial, and manufacturing industry are there; it depends upon the present decision of the Imperial Legislature to determine for whose benefit they are to be rendered available. The country which has founded and maintained these Colonies at a vast expense of blood and treasure may justly expect its compensation in turning their unappropriated resources to the account of its own redundant population; they are the rightful patrimony of the English people, the ample appanage which God and Nature have set aside in the New World for those whose lot has assigned them but insufficient portions in the Old. Under wise and free institutions these great advantages may yet be secured to your Majesty's subjects, and a connection secured by the link of kindred origin; and mutual benefits may continue to bind to the British Empire the ample territories of its North American provinces, and the large and flourishing population by which they will assuredly be filled."

Such were the words addressed by the English nobleman, sent to Canada upon a mission of such high issue, to the young queen who had just ascended the British throne. She lived to see, long before the end of her glorious and beneficial reign, peace and prosperity flourish in her North American dominions. Two races, still sharply divided by blood, language, and religion, live side by side. If entire harmony and good

will does not always exist, yet a working solution has at least been discovered for the most difficult of all political problems, and, beyond doubt, success, energy, boundless hope, replace lethargy and stagnation. Let us now trace the process by which this change came to pass.



## CHAPTER III

### THE LEGISLATIVE UNION OF 1841

IN Lord Durham's opinion the primary remedy for the evils which had vexed these colonies and thwarted their economic development was obvious. Follow out, he advised, the logical consequences of the establishment in 1791 of representative Assemblies. Bring about, by applying the British method, identity of will between the executive and legislative powers. He said in his report:—

“It is difficult to conceive what could have been their theory of government who imagined that, in any colony of England, a body invested with the name and character of a representative Assembly could be deprived of any of those powers which, in the opinion of Englishmen, are inherent in a popular legislature. It was a vain delusion to imagine that by mere limitations in the Constitutional Act, or an exclusive system of government, a body, strong in the consciousness of wielding the public opinion of the majority, could regard certain portions of the provincial revenues as sacred from its control, could confine itself to the mere business of making laws, and look on as a passive or indifferent spectator while those laws were carried into effect by men in whose intentions or capacity it had not the slightest confidence. Yet such was the limitation placed upon the authority of the Assembly of Lower Canada; it might refuse or pass laws, vote or withhold supplies, but it could exercise no influence on the nomination of a single officer of the Crown. The

Executive Council, the law officers, and whatever heads of departments are known to the administrative system of the province, were placed in power without any regard to the wishes of the people or their representatives; nor indeed are there wanting instances in which a mere hostility to the majority of the Assembly elevated the most incompetent persons to posts of honour and trust. However decidedly the Assembly might condemn the policy of the Government, the persons who had advised that policy retained their offices and the power of giving bad advice. If a law was passed after repeated conflicts, it had to be carried into effect by those who most strenuously opposed it."

Lord Durham had to meet the argument used in England by the Duke of Wellington, Lord Stanley, and Lord John Russell, that a colony which should name all its own administrative functionaries would, in fact, cease to be dependent. He admitted that the system proposed would place the internal affairs of a colony in the hands of the colonists themselves, and would give to them the execution of the laws which they had long been entrusted to make. In this, he maintained, there was no evil to the Mother Country, and he observed that it could not be to the interest of Great Britain to keep a most expensive military possession of the Colonies in order that a Governor or Secretary of State might be able to confer colonial appointments on one rather than on another set of persons in the Colonies. For that, he said, was really the only question at issue. One result of the divorce between Executive and Assembly had been that the initiative in voting and appropriating public money had been lodged in the Assembly.<sup>1</sup>

<sup>1</sup> In the United States the initiative and responsibility of raising and appropriating public revenue are lodged not with the President and his

While this system lasted Lord Durham held that good government was not attainable.

“As long as a revenue is raised which leaves a large surplus after the payment of the necessary expenses of the civil government, and as long as any member of the Assembly may, without restriction, propose a vote of public money, so long will the Assembly retain in its hands the powers which it everywhere abuses of misapplying that money. The prerogative of the Crown, which is constantly exercised in Great Britain for the real protection of the people, ought never to have been waived in the Colonies, and, if the rule of the Imperial Parliament, that no money vote should be proposed without the previous consent of the Crown, were introduced into these Colonies, it might be wisely employed in protecting the public interests now frequently sacrificed in that scramble for local appropriations which chiefly serves to give an undue influence to particular individuals or parties.”

Responsibility and initiative in the hands of a body of Ministers identified with the majority for the time being in the Legislative Assembly representing the will of the people, and a Representative of the

Ministers, but with Congress. Mr. Bryce, in his book on “The American Commonwealth,” thinks this system most unsatisfactory. He says (vol. i. p. 281 :—

“In the supremely important matter of raising and applying the public revenue, the Executive Government, instead of proposing and supervising, instead of securing that each department gets the money that it needs, that no money goes where it is not needed, that revenue is procured in the least troublesome and expensive way, that an exact yearly balance is struck, that the policy of expenditure is self-consistent and reasonably permanent from year to year, is, by its exclusion from Congress, deprived of influence on the one hand, of responsibility on the other. The Chancellorship of the Exchequer, to use an English expression, is put into commission, and divided between the chairmen of several unconnected committees of both Houses. A mass of business which, as English experience shows, specially needs the knowledge, skill, and economical conscience of a responsible Ministry, is left to committees which are powerful but not responsible, and to Houses whose nominal responsibility is in practice sadly weakened by their want of appropriate methods and organisation.”

Crown acting upon the advice of those Ministers—such was the system recommended for the Canadian Colonies. If, however, this system had been introduced into the several North American Colonies and their mutual independence had remained, the difficult questions arising as to customs duties and public works affecting two or more of these States would not have been solved. These questions were certain to increase in magnitude as trade increased with Europe, and when main lines of railway were constructed through British North America. They were by themselves sufficient to suggest the advisability of a federal, if not of a legislative or incorporating union.

Lord Durham found other reasons for an union of the provinces. The North American colonist, a member of a mighty but widely divided Empire, in the government of which he had no voice, could not feel himself to be, like the citizen of the United States, a member of a great and vigorous nation. His country, for practical purposes, was a province with a few hundred thousand inhabitants, and he felt the deadening influence of the narrow and subordinate community to which he belonged. The Colonists were in danger, so long as they had no national feeling of their own, of being subjugated by the thoughts and manners of the lively and powerful nationality lying to the south of their frontier. Moreover, the rising power of the United States made an union between the Canadian provinces very important from a military point of view. "War," said Heraclitus, "is the father of all things." The old force which has moulded so many nations, the necessity of union for common defence, shaped also the destinies of Canada. Unity in post-office administration, currency, and the banking system was also desired.

A motive of union more immediately pressing than all the rest was the difficulty of giving perfect constitutional freedom and control over Government to the people of Lower Canada, were that province to retain its previous isolation and independence. To do so would be to place the interests of the English minority, possessing a large proportion of the wealth and commerce of the province, in the hands of a majority of a different race and Church, mainly elected by peasants, and embittered by a long and furious political struggle ending in an unsuccessful and still smouldering rebellion. This consideration was by itself sufficient reason for an union of some kind. Indeed, the only alternative was to deprive the people of Lower Canada, or the majority of them, of the franchise, and to govern the province as a Crown Colony, or through an Assembly virtually elected by the English minority. If schemes of this kind were rejected, as they were by Lord Durham, nothing remained but to bring the English population of the Upper Province to redress the racial balance in the Lower. Thus all the conditions of the problem clearly indicated the necessity either of a federal or of an incorporating union between the various Canadian Colonies.

Lord Durham when he landed in Canada was inclined towards the project—favoured also by Sir Robert Peel—of a federal union, but as an intermediate step and not as a final end.

“I thought (he said) that it would be the tendency of a federation, sanctioned and consolidated by a monarchical government, gradually to become a complete legislative union; and that thus, while conciliating the French of Lower Canada by leaving them

the government of their own province and their own internal legislation, I might provide for the protection of British interests by the general Government, and for the gradual transition of the provinces into an united and homogeneous community."

But Lord Durham, after discussion and inquiry, changed his view, and recommended an immediate "Legislative" or "Incorporating" union. He was influenced by two main reasons. One was his conviction of the necessity of anglicising the French Canadians. He asked the question, "Is this French Canadian nationality one which, for the good merely of that people, we ought to strive to perpetuate?" His answer was a decided "No." He thought that this separate racial character, language, and institutions placed them at a great disadvantage in the midst of the Anglo-Saxon world of North America, and retained them in a position of hopeless inferiority. "It is to elevate them from that inferiority that I desire to give to the Canadians our English character." No plan for the future government of Lower Canada would avail unless it included the settlement "at once and for ever of the national character of the province." He added:—

"I entertain no doubt as to the national character which must be given to Lower Canada; it must be that of the British Empire; that of the majority of the population of British America; that of the great race which must, in the lapse of no long period of time, be predominant over the whole North American Continent. Without effecting the change so rapidly or so roughly as to shock the feelings and trample on the welfare of the existing generation, it must henceforth be the first and steady purpose of the British Government to establish an English population, with







English laws and language, in this province, and to trust its Government to none but a decided English Legislature."

It has been said of Cardinal Newman that he was the greatest man that ever tried, and made the most heroic attempt ever made, to change the character of a nation, and that he failed. That which Newman could not do in England, a legislative union failed to achieve in Canada, as it has failed to achieve it in Ireland. Even a despotic union has failed to effect this result in Poland, and in the case of the Jews not even a dispersion of two thousand years over the face of the earth has succeeded in accomplishing it. A nation which is marked off from the surrounding peoples by descent, language, religion, and local habitation will not easily undergo the metamorphosis contemplated by Lord Durham. Lord Durham's second reason for an union of the more complete kind, that is to say, a legislative or incorporating union, was sounder and more practical. It was that, for the present at any rate, in the embittered state of feeling, not even the limited power of a state or provincial assembly subject to a federal union could be entrusted to the French majority in Lower Canada.

"In the present state of feeling among the French population, I cannot doubt that any power which they might possess would be used against the policy and the very existence of any form of British government. I cannot doubt that any French Assembly that shall meet again in Lower Canada will use whatever power, be it more or less limited, it may have to obstruct the Government, and undo whatever has been done by it. Time, and the honest co-operation of the various parties, would be required to aid the action of a federal

constitution ; and time is not allowed, in the present state of Lower Canada, nor co-operation to be expected from a legislature of which the majority shall represent its French inhabitants. I believe that tranquillity can only be restored by subjecting the province to the rigorous rule of an English majority ; and that the only efficacious government would be that formed by a legislative union."

Lord Durham called attention to the precedents of the unions between England and Scotland, and between Great Britain and Ireland.

"The experience of the two unions in the British Isles may teach us how effectively the strong arm of a popular legislature would compel the obedience of the refractory population ; and the hopelessness of success would gradually subdue the existing animosities, and incline the French Canadian population to acquiesce in their new state of political existence. I certainly should not like to subject the French Canadians to the rule of the identical English minority with which they have been so long contending, but from a majority, emanating from so much more extended a source, I do not think they would have any oppression or injustice to fear ; and, in this case, the far greater part of the majority never having been brought into previous collision, would regard them with no animosity that could warp their natural sense of equity. The endowments of the Catholic Church in Lower Canada, and the existence of all its present laws, until altered by the united Legislature, might be secured by stipulations similar to those adopted in the union between Great Britain and Scotland."

In 1839 the constitution of the population was just such as would secure a sufficient working majority to the English population under a legislative union. The population of Upper Canada was estimated at 400,000,

the English inhabitants of Lower Canada at 150,000, and the French at 450,000. This English majority in the whole of Canada, in spite of the prolificness of the French Canadians, would draw ahead, it was thought, under the influence of emigration.

Lord Durham's report, summarised, comes to this. The cause of the political discontents in all the North American Colonies is due to the absence of the full system of representative government, and consequently, of working identity of will between the Executives and the popular Assemblies. It is, however, impossible to concede full representative government to Lower Canada so long as it remains independent, by reason of the racial animosities and the unfitness of the French majority to govern. This indicates the necessity of an union. An union will also solve the questions of financial relations between the provinces and the imposition and division of customs duties, of large public works in which co-operation of provinces is requisite, and of common military defence. An union is, moreover, necessary, in view of the growth of the United States, to create a national existence and feeling in British North America, and to save these provinces from being absorbed morally, economically, and, finally, politically, by the Republic to their south. An union may be federal, or it may be legislative. In this case a legislative union is to be preferred because it would accelerate the merging of the French nationality in the English, and is, moreover, under present circumstances, the only means of preventing abuse of political power by the French majority in Lower Canada.

Thus the union was recommended partly in order to fuse into a single anglicised nationality the two Canadian

rates, partly as a measure of defence against the United States, partly as the only means of conceding to the Canadian provinces the full benefit of representative institutions without allowing the ascendancy of the French over the English in the Lower Province, and partly with a view to the better development of the territories through united action.

The report was presented to the House of Commons on February 11, 1839. On October 14, 1839, an important despatch upon general colonial policy was sent by Lord John Russell to Lord Durham. It stated that the Queen's Government had "no desire to thwart the representative Assemblies of British North America in their measures of reform and improvement," or to "make these provinces the resource for patronage at home," but wished to give a full career in the Colonies to the talent and character of leading persons. "Her Majesty has no desire to maintain any system in policy among her North American subjects which opinion condemns." It was her Majesty's gracious intention "to look to the affectionate attachment of her people in North America as the best security for permanent dominion. It is necessary for this purpose that no official misconduct should be screened by her Majesty's representative in the provinces, and that no private interests should be allowed to compete with the general good." The despatch adds that there was no surer way of earning the approbation of the Queen "*than by maintaining the harmony of the executive with the legislative authorities.*" Both Governor and Assembly were recommended to exercise a wise moderation in the use of their respective powers. "The Governor must only oppose the wishes of the Assembly when

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the honour of the Crown or the interests of the Empire are deeply concerned ; and the Assembly must be ready to modify some of its measures for the sake of harmony and from a reverent attachment to the authority of Great Britain."

This reassuring despatch might be compared with the Proclamation addressed to the peoples of India after the Mutiny of 1857. It was an assurance and a concession. Lord John Russell retreated from the position which he had himself recently maintained that full representative government, as in England, could not safely be conceded to a colony. The remnants of that old colonial theory which had caused the loss to the British Crown of the best part of America were now swept away. England has hitherto succeeded because her Government and People are capable of learning lessons from experience, just as Spain has lost a splendid empire because she could learn no lesson.

In November 1839 six resolutions were passed by the special or interim Council of Lower Canada on the subject of the proposed union. The first of these declared—

"That, under existing circumstances, in order to provide adequately for the peace and tranquillity, and the good, constitutional, and efficient government of the provinces of Upper and Lower Canada, the reunion of these provinces under one legislature, in the opinion of this Council, has become of indispensable and urgent necessity."

The Assembly and Legislative Council of Upper Canada also came to a resolution in favour of an union. Upper Canada was no doubt influenced to a considerable degree by commercial and financial reasons in its

desire for an union. Its zeal in public works had resulted in a large debt and deficient revenue, while Lower Canada had a small debt and surplus revenue. Hence the consolidation of debts and revenue was to the advantage of the Upper Province. Naturally, also, the Upper Canadians were anxious to have greater control over their communications with the sea and the duties levied at the ports.

The Union Bill passed smoothly through the two Houses of the British Parliament in the year 1840, and took effect on the 10th February 1841. The Act provided for the union of the two provinces in one province to be called "Canada." The legislative body was to consist (1) of the "Legislative Council," to be composed of not fewer than twenty members, nominated by the Crown and holding their seats for life, unless they resigned or became disqualified by certain circumstances; (2) an Assembly, consisting of eighty-four members, forty-two from each province, to be elected by popular suffrage. The first Parliament of the United Provinces under this Act met on June 13th, 1841, and was opened with all the ceremony due to so important an occasion.



## CHAPTER IV

### LORD ELGIN'S GOVERNMENT, 1847 TO 1854

THE two short administrations of Lord Sydenham and Sir Charles Bagot after the union were followed in 1842 by that of Lord Metcalfe, whose training in India had hardly been of a kind to fit him for constitutional government in the closing years of his career. He was soon at issue with his Ministry on a question of patronage. The Ministry resigned, and Lord Metcalfe formed a new one from the Conservative minority, dissolved Parliament, and threw his whole personal influence into the electoral contest with as much party zeal as did King George III. in like circumstances in 1784 or Marshal Macmahon in 1877. Lord Metcalfe succeeded in obtaining a small majority, and in his speech to the new Parliament declared that, "while he recognised the just power and privilege of the people to influence their rulers, he reserved to himself the selection of the Executive." The effect of this line of action, said Lord Grey in his book "*The Colonial Policy of Lord John Russell's Administration*," was to direct parliamentary opposition no longer merely against the advisers of the Governor, but "against the Governor personally and the British Government of which he was the organ." It was contrary to the principles advocated in Lord Durham's report and to the true meaning of Lord John Russell's despatch of October 1839, in which he announced that for the

future the principal offices in the North American Colonial Government would not be considered as being held by a tenure equivalent to one during good behaviour, but that the holders would be liable to be called upon to retire whenever, from motives of public policy or for other reasons, this should be found expedient." Lord Metcalfe, however, would probably have found small difficulty in reconciling this cautious and ambiguous language with his own declaration of policy.

The full establishment in Canada of the principle of administration through Ministers in harmony with the majority for the time being of the popular Assembly dates from the administration of Lord Elgin, 1847 to 1854. Lord Elgin, second of three bearers of that illustrious name distinguished in the history of the Empire, was at the date of his appointment a man of thirty-six years of age, who had for several previous years been Governor of Jamaica.<sup>1</sup>

Lord Grey, the Colonial Secretary, in sending out Lord Elgin, gave him instructions which may thus be summarised. The Governor-General was to choose his Executive Council from the party which for the time being commanded the confidence of the Legislature, was not to identify himself with either party, but to act as a mediator and moderator between the influential of all parties, and never to refuse to accede to the advice of his Council for the time being except upon matters of "very grave concern."<sup>2</sup>

Lord Elgin arrived in Canada at the beginning of 1847. He was at once struck by this great difficulty which beset the Legislature and Government of the United Provinces, viz., that "a Conservative Govern-

<sup>1</sup> See "Life and Letters of Lord Elgin," by Walrond.

<sup>2</sup> Lord Grey's "Colonial Policy," i. 212.

ment has meant a government of Upper Canadians, which is intolerable to the French, and a Radical Government a government of French, which is no less hateful to the British." Judged by the English standard the names were misnomers, since the French Radicals of Canada, elected by Catholic peasants, were in most questions entirely averse to what in England are deemed to be Radical or even Liberal principles and measures.

Lord Elgin came resolved to take, so far as he could, the position held by the constitutional monarch at home. "I still adhere," he wrote to his wife (who was Lord Durham's daughter), "to my opinion that the real and effectual vindication of Lord Durham's memory and proceedings will be the success of a Governor-General of Canada who works out his views of government fairly." The tenacity with which Lord Elgin held to these principles was at once put to a severe test. The Canadian Parliament was dissolved at the end of 1847, the existing "Conservative" Ministry found itself in a decided minority, and in the spring of 1848 resigned. A new Ministry was formed from the Opposition, and included the French leaders, much to the dissatisfaction of the old Tory party, who thus saw power given to men whom they still considered to be rebels at heart. There was, moreover, much discontent of a general character in Canada at the time in consequence of an industrial depression. All this fuel was kindled into conflagration by a Bill introduced by the new Ministry in January 1849 for indemnifying persons in Lower Canada, other than convicted rebels, for losses sustained by the destruction of property during the rebellion of 1837 and 1838. The loyalists whose property had been

destroyed by the rebels had already received compensation. It was now proposed to give compensation to those also whose property had been injured by the indiscriminating fury of the troops or the loyalists. This modest and just measure met with a most violent opposition, and petitions flowed in from all parts of Upper Canada asking that Parliament might be dissolved on the question, or that the Bill might be reserved for the royal sanction. Among the objectors were many most worthy colonials, to whom, as Lord Elgin wrote to Lord Grey, "the principles of constitutional government are unfathomable mysteries," and who regarded the representative of the Crown, and, more remotely, the Imperial Government, with the "most intense and unrelenting indignation" if political affairs were not "administered in entire accordance with their sense of what is right."

When Lord Elgin assented to the Bill, fierce rioting broke out in Montreal, then the seat of Government. The carriage of the Governor-General was twice assaulted in the streets, and the mob set fire to the House of Parliament while the members were in actual session and burnt it to the ground. The leaders meanwhile sent in petitions to the queen for the recall of Lord Elgin and the disallowance of the Bill. Lord Elgin calmly held to his position in spite of the violent feeling in Upper Canada, which was supported and justified by a powerful portion of the English press. The Bill was two months later vehemently attacked in the British House of Commons (14th June) by Mr. Gladstone as being a measure for the rewarding of rebels, and by Lord Brougham, with his usual exaggerated rhetoric, in the House of Lords. Mr. Gladstone said in his speech, "I cannot admit that the

sense of the people of Canada is to limit the criterion that ought to be taken on imperial questions, and involving the highest imperial considerations. If this question involved local considerations only I would bow to their opinion at once, but as it involves imperial questions, here, and here only, can it receive its final decision."

In the House of Lords the resolutions condemning the conduct of the Canadian Government were only defeated by a majority of three. The Home Government, however, stood by Lord Elgin, and the feeling on the question gradually subsided.

Nothing, probably, did so much to inspire the French Canadians with faith in the justice of imperial suzerainty as the resistance of Lord Elgin to the attacks made upon him on this occasion by the Tory, Orange, or so-called Loyalist party. Years later, when he was Viceroy of India, in a letter observing upon the policy of his predecessor, Lord Canning, whose clemency after the Mutiny had drawn upon him similar attacks, Lord Elgin wrote :—

"If I were to venture to compare great things with small, I should say that the feelings of the natives towards Canning were due to causes somewhat similar to those which earned for me the goodwill and confidence of the French Canadians in Canada. Both he and I adopted on some important points views more favourable to the subject races than those which had been entertained by our respective predecessors. So far we established substantial and legitimate claims on their regard. But it was not so much the intrinsic merit of those views, still less was it the extent to which we acted upon them, which won for us the favour of those races; we owed that mainly to the uncompromising hostility, the bitter denunciations,

and the unmeasured violence which the promulgation of those views provoked from those who were regarded by them as their oppressors."

In the case of these indemnifications, Lord Elgin victoriously maintained the principle of government by the will of the majority against a minority still inspired by ascendancy feelings. In two other questions of importance his influence obtained for Canada the right to legislate on questions exclusively concerning herself, even though those questions had already been settled by Acts of the Imperial Parliament.

One of these questions was that of the Clergy Reserves, that old source of discord in Upper Canada. It has been stated that large quantities of land had been set apart under the Act of 1791 for the support of a "Protestant clergy." Till 1820 this had been held as meaning exclusively the clergy of the Church of England; but in that year, under an opinion given by the law officers of the Crown in England, the meaning of the Act was extended to clergy of the Church of Scotland, but not to Dissenters. In 1840 the British Parliament passed an Act recognising the claims of clergy of all Protestant denominations, empowering the Governor to sell the lands, and apply one-half of the proceeds, subject to the life-interests of the existing clergy, to the colonial churches of England and Scotland, in proportion to their respective numbers, and to distribute the remaining half among the clergy of other denominations. This arrangement did not satisfy the majority of the Colonists, especially after the Scottish Free Church schism in 1843, and in 1850 the colonial Parliament voted an address to the Queen praying that the Act of 1840 might be repealed, and

that the local Legislature might be empowered to deal with the lands and their proceeds, subject to the life-interests of existing stipend-holders. This was resisted by the clergy and laity of the two endowed Protestant churches in Canada, who desired that the matter should not be dealt with by the local Parliament, so largely elected by Catholics; but, on the advice of Lord Elgin, opposed though his personal feeling was to secularisation, the concession was made by the British Government and Parliament.

Lord Elgin was informed, in a despatch intended as an answer to the Address of the Canadian Parliament, that the Imperial Government would accede to the settlement of the matter by that Parliament.

“In coming to this conclusion” (he was told), “her Majesty’s Government have been mainly influenced by the consideration that, great as in their judgment would be the advantages which would result from leaving undisturbed the existing arrangement by which a certain portion of the public lands of Canada are made available for the purpose of creating a fund for the religious instruction of the inhabitants of the province, still the question whether that arrangement is to be maintained is one so exclusively affecting the people of Canada that its decision ought not to be withdrawn from the provincial Legislature, to which it properly belongs to regulate all matters concerning the domestic interests of the province.”

By an Act passed in 1853, the Act of 1840 was repealed and power given to the Canadian Parliament to deal with the question.

The Imperial Government also allowed the Canadian Legislature to reform itself, although its constitution rested upon a British Act of Parliament. This

was done in two ways—by the increase of the number of representatives, and by the change from nomination to election in the case of the second Chamber. At Lord Elgin's recommendation the English Government carried, in 1854, a Bill through the Imperial Parliament enabling the Colonial Legislature to effect the latter important change, in spite of the protest of Lord Derby, who thought that with an elective second Chamber monarchy could not exist in Canada. It is worthy of note that this change in the democratic direction did not endure. Under the federal constitution of 1867 a return was made to the system of nomination by the Crown.

Lord Durham laid foundations, and his son-in-law, Lord Elgin, built upon them. The solution of the question how to reconcile the integrity of the Empire with the freedom of those Colonies which possess populations capable of freedom, is largely due to these two statesmen. The question whether Canada would remain part of the British Empire was far from settled when Lord Elgin took the helm in 1847. The existing aspirations of a certain party towards union with the States had been enhanced by the economic results of British variations of trade policy.

The British Navigation Laws, injurious to Canadian interests by enhancing freights for the benefit of English shipowners, were not repealed till June 1849. Again, until 1843, the English Corn Laws affected Canada and the States alike. But by the Corn Act of 1843, a kind of half-way house to Free Trade, wheat and flour from Canada were admitted into England at a nominal duty. Thus a premium was put upon the grinding of American wheat in Canada and its transshipment thence as flour, and a great amount of Cana-



dian capital was invested in mills. But almost before these arrangements were completed and the newly built mills fairly at work, the Free Trade Act of 1846 swept away the advantage conferred upon Canada, and rendered useless all the expenditure of capital.<sup>1</sup>

“I do not think,” wrote Lord Elgin to the Secretary of State, “that you are blind to the hardships which Canada is now enduring, but, I must own, I doubt much whether you fully appreciate their magnitude, or are aware how directly they are chargeable on imperial legislation. Stanley’s Bill of 1843 attracted all the produce of the west to the St. Lawrence, and fixed all the disposable capital of the province in grinding mills, warehouses, and forwarding establishments. Peel’s Bill of 1846 drives the whole of the produce down the New York channels of communication, destroying the revenue which Canada expected to derive from canal dues, and ruining at once millowners, forwarders, and merchants. The consequence is, that private property is unsaleable in Canada, and not a shilling can be raised on the credit of the province.”

Canadian produce was driven to seek a market in the States, and, as it paid a heavy duty on the frontier, farmers on the north side of the line found themselves much worse off than their immediate neighbours to the south of it. “All the prosperity,” said Lord Elgin, “of which Canada is robbed is transplanted to the other side of the lines, as if to make Canadians feel more bitterly how much kinder England is to the children who desert her than to those who remain faithful. . . . I believe that the conviction that they would be better off if they were ‘annexed’ is almost universal among the commercial classes at present.”

How would it have been, one asks oneself, for

<sup>1</sup> See Lord Grey’s “Colonial Policy,” i. 220.

Canada and the Empire, if the line of policy taken by Lord Stanley's Act of 1843 had not been abandoned but developed, and fiscal preference had been given by England to colonial and Indian exports?

One would imagine that England would then in turn have been able to require free admission of her own exports by all the Colonies, and that the arrangement might have grown into an imperial zollverein of the whole Empire. We might have had free interchange of commodities within and uniform duties against the outer world, and eventually, perhaps, a Federal Council of the Empire to regulate the whole system. But the urban populations in Great Britain, led by Cobden and Bright, were at that time intent upon nothing but the cheap loaf, and by no means in the mood for far-reaching imperial policy.

Lord Grey, in his book of 1853 on "Colonial Policy," points out the connection between the free trade movement in England and the temporary loosening of the bonds of the British Empire. For more than two centuries the great object of all European nations in colonial extension, as it still is that of most, was to give on the one hand a monopoly of their colonies' commerce to the parent State, and on the other to give a preference to their produce in its markets. Sir Robert Peel's measure in 1846, placing foreign and colonial commerce upon an equal footing, shocked long-held convictions, and was one cause of the doubts which then prevailed in England as to the benefit of preserving connection with the Colonies, and, in the Colonies, as to the benefit of remaining attached to the British Empire.

"Not only," says Lord Grey, "those who still adhered to the opinion that the former policy with respect to colonial commerce was the right one, but many of

the most eager advocates of the principles of free trade, concurred in arguing that, if the Colonies were no longer to be regarded as valuable on account of the commercial advantages to be derived from their possession, the country had no interest in keeping those dependencies, and that it would be better to abandon them; thus getting rid of the heavy charge on the country, especially in providing the requisite amount of naval and military force for their protection. In like manner, the Colonists began to inquire whether, if they were no longer to enjoy their former commercial privileges in the markets of the Mother Country, they derived any real benefit from a continuance of the connection."

Lord Grey's answer was that the British Empire ought to be maintained from the English point of view, because it added to our strength to have faithful and steady allies in various parts of the world, and because from a higher point of view we had incurred a great responsibility, and were bound to support it with a view to maintaining peace and extending civilisation. To the Colonies, he thought, the connection was of still greater material importance, because, while they were still small and weak communities, their inhabitants enjoyed, in return for allegiance to the Crown, all the security and consideration belonging to subjects of an exceedingly powerful State. These considerations are of a high order and have prevailed, but at the moment of the repeal of the old British commercial policy the opposite reasonings seemed plausible. It was one of the moments of unloosening which from time to time recur in history.

Writing in 1849 Lord Elgin said that the "disaffection now existing in Canada, whatever be the forms in which it may clothe itself, is due mainly to commercial causes."

"So general," he added, "is the belief that under the present circumstances of our commercial condition, the Colonists pay a heavy pecuniary fine for their fidelity to Great Britain, that nothing but the existence to an unwonted degree of political contentment of the masses has prevented the cry for annexation from spreading like wildfire through the province."

This, he pointed out, was a new feature in Canadian politics.

"The plea of self-interest, the most powerful weapon, perhaps, which the friends of British connection have wielded in times past, has not only been wrested from my hands, but transferred since 1846 to those of the adversary."<sup>1</sup>

The remedy offered to the Canadians was, he pointed out, perfectly definite and intelligible.

"They are invited to form part of a community which is neither suffering nor free-trading, which never makes a bargain without getting at least twice as much as it gives; a community the members of which have been within the last few weeks pouring into their multifarious places of worship to thank God that they are exempt from the ills which afflict other men, from those more especially which afflict their despised neighbours, the inhabitants of North America, who have remained faithful to the country which planted them."

Lord Elgin was convinced that economic motives of self-interest of the most palpable description were suggesting separation, and that these influences were only counteracted by a feeling of gratitude "for what

<sup>1</sup> He showed that a bushel of wheat, grown on the Canadian side of the line, fetched 9d. to 1s. less that year in the market than did a bushel of wheat grown in a farm in New York State distant less than a mile.

has been done and suffered in this year in the cause of Canadian self-government."

So strong was the "annexation" movement in 1849 that Lord Elgin and his Executive Council had to remove from office several magistrates, queen's counsel, militia officers, and other holders of public office, who had signed an elaborate manifesto in favour of that policy. He was supported in this step by the Imperial Government, but the Canadian disaffection was fostered by that indifference to the colonial connection, and pessimism as to its continuance, which still prevailed among English public men. Lord John Russell himself was incorrigible, and thought that every measure which he supported for widening the limits of colonial home-rule, was but one step more in the direction of inevitable, and not altogether to be feared, separation. On the 8th February 1850, speaking in the House of Commons upon the subject of colonial policy generally, he said:—

"I anticipate, indeed, with others, that some of the Colonies may so grow in population and wealth that they may say, 'Our strength is sufficient to enable us to be independent of England. The link is now become onerous to us; the time is come when we can, in amity and alliance with England, maintain our independence.' I do not think that that time is yet approaching. But let us give them, as far as we can, the capacity of ruling their own affairs; let them increase in wealth and population, and, whatever may happen, we of this great empire shall have the consolation of saying that we have contributed to the happiness of the world."

Lord Elgin's comments upon these words, made in a letter to Lord Grey, dated 23rd March 1850, are well

worth quoting at length, because they show most clearly the divergence of thought between the fore-runners of the coming imperial faith, and men bred up like Lord John Russell upon the lines of thought inspired by the old colonial theory, as modified by the loss of the first American Colonies, men to whom it seemed that there was no final alternative to government from Downing Street except entire separation and colonial independence.

“On this solemn occasion,” wrote Lord Elgin, “the Prime Minister of England, amid the plaudits of a full senate, declared that he looked forward to the day when the ties which he was endeavouring to render so easy and mutually advantageous would be severed. And wherefore this foreboding? or, perhaps I ought not to use the term foreboding, for really, to judge by the comments of the press upon this declaration of Lord John’s, I should be led to imagine that the prospect of these sucking democracies, after they have drained their old mother’s life-blood, leaving her in the lurch and setting up as rivals, just at the time when their increasing strength might render them a support instead of a burden, is one of the most cheering which has of late presented itself to the English imagination. But wherefore, then, this anticipation—if foreboding be not the correct term? Because Lord John and the people of England *persist in assuming that the colonial relation is incompatible with maturity and full development*. And is this really so incontestable a truth that it is a duty not only to hold but to proclaim it? Consider for a moment what is the effect of proclaiming it in our case. We have on this continent two great empires in presence, or rather, I should say, two great imperial systems. In many respects there is much similarity between them. In so far as powers of self-government are concerned, it is certain that our

Colonists in America have no reason to envy the citizens of any State in the Union. The forms differ, but it may be shown that practically the inhabitants of Canada have a greater power in controlling their own destiny than those of Michigan or New York, who must tolerate a tariff imposed by twenty other States, and pay the expenses of a war undertaken for objects which they profess to abhor. And yet there is a difference between the two cases; a difference of sentiment rather than of substance, which renders the one a system of life and strength, the other a system of death and decay. No matter how raw and rude a territory may be when it is admitted as a State into the Union of the United States, it is at once, by the popular belief, invested with all the dignity of manhood, and introduced into a system which, despite the combativeness of certain ardent spirits from the South, every American believes and maintains to be immortal. But how does the case stand with us? No matter how great the advance of a British colony in wealth and civilisation, no matter how absolute the powers of self-government conceded to it, it is still taught to believe that it is in a condition of pupillage from which it must pass before it can attain maturity. For one, I have never been able to comprehend why, elastic as our constitutional system is, we should not be able, now more especially when we have ceased to control the trade of our Colonies, to render the links which bind them to the British Crown at least as lasting as those which unite the component parts of the Union. . . . One thing is, however, indispensable to the success of this, or any other, system of colonial government. You must renounce the habit of telling the Colonies that the colonial is a provisional existence. You must allow them to believe *that, without severing the bonds which unite them to Great Britain, they may attain the degree of perfection, and of social and political development, to which*

*organised communities of free men have the right to aspire."*

Lord Elgin, after giving some striking instances of the discouragement caused to loyal Canadians by speeches like Lord John Russell's, and by the "perfectly unsound and most dangerous theory that British Colonies could not attain maturity without separation," and dwelling upon the economic and commercial instability due to the idea that the existing connection between Canada and England was but temporary and transient, went on to ask:—

"Is not the question at issue a most momentous one? Is the Queen of England to be the sovereign of an Empire, growing, expanding, strengthening itself from age to age, striking its roots deep into fresh earth, and drawing new supplies of vitality from fresh soils? Or is she to be for all essential purposes of might and power monarch of Great Britain and Ireland merely—her place and that of her line in the world's history determined by the productiveness of 12,000 square miles of a coal formation, which is being rapidly exhausted, and the duration of the social and political organisation over which she presides dependent on the annual expatriation, with a view to its eventual alienation, of the surplus swarms of her born subjects?"

Lord John Russell would, his critic suggested, have adopted a safer and better course if, instead of virtually bidding the Colonists to prepare for separation, he had shown that the Government and Parliament had no end in view save the "establishment of the relation between the Colonies and the Mother Country on a basis of mutual affection," and that "*as the idea of maintaining a Colonial Empire for*



*the purpose of exercising dominion or dispensing patronage had been for some time abandoned, and that of regarding it as a hotbed for forcing commerce and manufactures more recently renounced, a greater amount of free action and self-government might be conceded to British Colonies without any breach of imperial unity, or the violation of any principle of imperial policy, than had under any scheme yet devised fallen to the lot of the component parts of any federal or imperial system."*

To read the speech of Lord John Russell and this commentary upon it is to see the movement of thought in this matter. Lord Elgin's conviction has now become an imperial creed held by almost all men. When the American Foreign Secretary, in his despatch in 1896 concerning the Venezuela question, announced that there could be no permanent connection between one country and another country three thousand miles distant, he was but behind his time.<sup>1</sup> His doctrine was held by many Englishmen, if not by most Englishmen, fifty years earlier; but, when he wrote, it had been almost entirely abandoned upon this side of the Atlantic. It is true that unless British statesmen had conceded to the Canadians the full right to live as a nation, permanent union with the British Empire would have been impossible. A distinguished Irishman has said that Canada did not receive home-rule because she was loyal, but is loyal because she received home-rule. To no one man was this solution of the problem due more than to Lord Elgin. In his last speech made at Quebec on the eve of his departure in December 1854, he most truly said that it had been his earnest endeavour to implant and establish the principle

“of national life in harmony with British connection.”

Lord Elgin's services cannot be rated too highly. His tenure of office in Canada came to bridge the interval of indifference when the connection with the Colonies had lost the old value given to it for reasons of patronage and exclusive commerce, and before England perceived how immense was to her the value of a Colonial Empire if she was to hold her own in the world. In 1850 the Russian Power was not within a measurable distance of the Indian frontier and the Chinese provinces. The instinct of common danger and the need of joint defence now teaches to all men the imperial doctrine, not, in the mid-century, clearly seen except by statesmen like Lord Elgin and Lord Grey.

Before quitting this subject, it will be well to consider Lord Elgin's conception of the functions of a Canadian Viceroy.

In Lord Elgin's view, the Viceroy of Canada should consent to all the proposals definitely made by his Ministers so long as they were not repugnant to public morals or injurious to imperial interests. He was to be the guardian in the last resort of the highest interests, the link between the Mother Country and the colony, an adviser of his advisers in matters above the plane of party politics. In 1852 he wrote to a friend :—

“I have been possessed (I use the word advisedly, for I fear that most persons in England still consider it a case of *possession*) with the idea that it is possible to maintain on this soil of North America, and in the face of Republican North America, British connections and British institutions, if you give the latter freely and

trustingly. . . . I believe that it is equally an error to imagine, with an old-fashioned party, that you can govern such dependencies as this on the antiquated bureaucratic principle, by means of rescripts from Downing Street, in defiance of the popular legislatures, and on the hypothesis that one local faction monopolises all the loyalty of the colony; and to suppose, with the Radicals, that all is done when you have simply told 'the Colonists to go to the devil their own way.' I believe, on the contrary, that there is more room for the exercise of influence on the part of the Governor under my system than under any that ever was before devised; an influence, however, wholly moral—an influence of suasion, sympathy, and moderation, which softens the temper while it elevates the aim of local politics. It is true that on certain questions of public policy, especially with regard to Church matters, views are propounded by my Ministers which do not exactly square with my preconceived opinions, and which I acquiesce in, so long as they do not contravene the fundamental principles of morality, from a conviction that they are in accordance with the general sentiment of the community. . . . I have always said to my advisers, 'While you continue my advisers you shall enjoy my unreserved confidence, and, *en revanche*, you shall be responsible for all acts of government.' But it is no less certain that there is not one of them who does not know that no inducement on earth would prevail with me to bring me to acquiesce in any measures which seemed to be repugnant to public morals or imperial interests;<sup>1</sup> and I must say that, far from finding in my advisers a desire to entrap me into proceedings of which I might dis-

<sup>1</sup> "But there are cases of internal government in which the honour of the Crown, or the faith of Parliament, or the safety of the State, are so seriously involved, that it would not be possible for her Majesty to delegate her authority to a Ministry in a colony."—Lord John Russell's Despatch to Lord Sydenham, 14th October 1839.

approve, I find a tendency, constantly increasing, to attach the utmost value to my opinion on all questions, local or general, that arise" (p. 127).

In the last official despatch which he wrote from Canada, on December 18, 1854, Lord Elgin repeated his conviction that the beneficial influence of a Governor in a colony like Canada was most surely confirmed and extended by a frank acceptance of the parliamentary system :—

"Placed by his position above the strife of parties—holding office by a tenure less precarious than the Ministers who surround him—having no political interests to serve but that of the community, whose affairs he is appointed to administer—his opinion cannot fail, when all cause for jealousy and suspicion is removed, to have great weight in the colonial Councils, while he is set at liberty to constitute himself in an especial manner the patron of those larger and higher interests—such interests, for example, as those of education and of moral and material progress in all its branches—which, unlike the contests of party, unite instead of dividing the members of the body politic.'

In some respects the Viceroy of a free colony like Canada may have, if he is prudent and clever, more real guiding power than the Governor of a Crown Colony, who has to refer his actions to the Colonial Office; or even than a Viceroy of India, who on the one side is checked by the Secretary of State and the Indian Council, and on the other has to consider the opinion of a highly skilled and hierarchically organised bureaucracy. Lord Elgin had experience of all three positions. He was at first Governor of a Crown Colony—Jamaica—then of Canada, and finally, though un-

happily but for a short space, he was Viceroy of India. In Canada he said :—

“I have tried both systems. In Jamaica there was no responsible government, but I had not half the power I had here with my constitutional and changing Cabinet.”

And in India he wrote on December 9, 1862 :—

“Perhaps I may see reason after a little more experience here to modify my opinion on these points. If I were to tell you what I *now* think of the relative amount of influence which I exercised over the march of affairs in Canada, where I governed on strictly constitutional principles, and with a free Parliament, as compared with that which the Governor-General wields in India when at peace, you would accuse me of paradox.”

Sir Mountstuart Grant Duff records, in his “Notes from a Diary,” the saying of an old English Jesuit: “It is surprising how much good a man may do in the world if he allows others to take the credit of it.” A constitutional monarch, or viceroy, holds a singularly good position for influencing in this unseen way the course of the world’s history. These considerations have an important bearing upon the future position of the monarchy in the United Kingdom and the British Empire.

## CHAPTER V

### THE CREATION OF THE CANADIAN DOMINION (1867)

LORD DURHAM contemplated in his report the eventual amalgamation under a legislative union, not only of the two Canadas, but of the other British North American provinces, Newfoundland, Nova Scotia, New Brunswick, and Prince Edward Island. It was not found practicable to carry into effect this wider concentration, and, as the years went on, there was a return of public opinion towards the idea of a federal union of the whole great territory. The Constitution of 1840 had secured equal representation in the Canadian Parliament to the provinces of Upper and Lower Canada. At that date the arrangement was favourable to the Upper Province, which was, under it, largely over-represented in proportion to its population. But, after 1840, the stream of emigration from Europe to Upper Canada set in strongly, and the proportions were altogether changed. Three decennial returns show these results :—

In 1841	Upper Canada numbered	.	.	465,000
"	Lower Canada	"	.	691,000
In 1851	Upper Canada	"	.	952,000
"	Lower Canada	"	.	890,000
In 1861	Upper Canada	"	.	1,396,000
"	Lower Canada	"	.	1,111,000 <sup>1</sup>

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<sup>1</sup> The census of 1891 gives the following figures for the whole

Time evidently would increase the advantage of the Upper Province. The Upper Canadians began to demand a larger representation, and this was resisted by the French. Moreover, the system of equal representation of the two provinces was not favourable to the working of constitutional government of the English kind. Parties were too nearly balanced to allow of strong and stable Ministries.

At first it was only possible to make the United Parliament work at all by the adoption of the "double majority system"—that is, that a majority not only of the whole Assembly, but of each of the two sets of provincial representatives, should be secured for every measure. This principle was abandoned by the Macdonald Ministry of 1857, who relied upon the votes of Lower Canada supported by an Upper Canadian minority. At once the cry of "French domination" arose in Upper Canada, and it was found that as soon as the "double majority" compromise was given up, nothing was to be looked for but a succession of weak and unstable Ministries. The Upper Canadians were discontented also with the application of revenue. They now contributed the larger proportion, and resented the expenditure of so much of it in public works in French Canada. Moreover, the whole of British North America suffered from the evils of Dominion. The results of the census of 1901 did not appear in time to be inserted here.

Prince Edward Island . . . . .	109,078
Nova Scotia . . . . .	450,396
New Brunswick . . . . .	321,263
Quebec . . . . .	1,488,535
Ontario . . . . .	2,114,321
Manitoba . . . . .	152,506
British Columbia . . . . .	97,613
Territories and Arctic Islands . . . . .	98,967

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Total, 4,832,679

disunion. Canada, Nova Scotia, New Brunswick, and Newfoundland were separated by hostile tariffs and Custom-houses; there was no identity of banking system among these colonies, no uniform postal arrangements, no identical currency, no combination for military defence. Thus on all sides arose a predisposition towards an union of a new and wider nature; decentralising, so far as regards the two Canadas, centralising, as regarded the whole of the North American Colonies.

In 1864 the Governments of the Maritime Provinces of Nova Scotia, New Brunswick, and Prince Edward Island appointed delegates to arrange the terms of a legislative union among themselves. Shortly before this a Coalition Ministry, supported by the Upper Canadian Reformers and a branch of the Lower Canadian Conservatives, had been formed upon the policy of a federal union. This Government asked permission to join the Conference of the Maritime Provinces, and sent delegates, who proposed the confederation of all the British North American Colonies. The Conference adjourned from Charlottetown, where it had first met, to Quebec, and there were drawn up the resolutions afterwards known as the Quebec scheme. These resolutions, with some slight changes, formed the basis of the measure afterwards submitted to the Imperial Parliament.

The policy was strongly supported by the Imperial Government. During the American Civil War, the military power of the United States had been enormously developed, and at one critical point seemed upon the verge of being directed against the British Empire. The necessity for consolidating the North American dominions, and creating in Canada a true



and powerful nation capable of assisting in its own defence against southern aggression became manifest. In his speech at the opening of the Canadian Parliament, in 1865, the Governor-General, Lord Monck, said :—

“ It remained with the public men of British North America to say whether the vast tract of country which they inhabited should be consolidated into a State, combining within its area all the elements of national greatness, providing for the security of its component parts, and contributing to the strength and security of the Empire ; or whether the several provinces of which it was constituted should remain in their present fragmentary and isolated condition, comparatively powerless for mutual aid, and incapable of undertaking their proper share of imperial responsibility.”

Both Houses of the Canadian Legislature adopted the Quebec resolutions by a large majority in February 1865. There was much opposition, however, in the Maritime Provinces, and in Newfoundland and Prince Edward Island the Legislatures refused to proceed. The remaining provinces, New Brunswick and Nova Scotia, sent delegates to London to arrange the basis of a federal union, in concert with delegates from Upper and Lower Canada and with the Imperial Government. The four provinces then entering into confederation combined 400,000 square miles, or an area more than four times the size of England and Scotland, with a population, in 1867, of about four millions, and a revenue then amounting to about £3,000,000.

The Federation Bill was introduced into the House of Lords by Lord Carnarvon in February 1867, and it passed through both Houses of the Imperial Parliament with very little discussion and without a

division, and received the royal assent on the 1st July—the birthday of the great Dominion, kept as a public holiday, under its title of “Dominion Day,” throughout British North America.

Lord Carnarvon, in his speech introducing the measure, said :—

“It is not every nation or every stage of the national existence that admits of a federative government. Federation is only possible under certain conditions, when the States to be federated *are so far akin that they can be united, and yet so far dissimilar that they cannot be fused into a single body politic.* And this I believe to be the present condition of the provinces of North America.”

These words were an admission that, after an experiment lasting for twenty-seven years, the fusion of French and English predicted and relied upon by Lord Durham had failed to take place.

The “British North America Act, 1867,” begins by a recital of the desire of the provinces of Canada, Nova Scotia, and New Brunswick to be “federally united into a Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom.” It then directs a division into four provinces, to be called *Ontario, Quebec, Nova Scotia, and New Brunswick*, the two first provinces being formed by the severance of the province of Canada into the two component parts out of which it had been formed in 1840, viz., Upper Canada and Lower Canada.<sup>1</sup>

<sup>1</sup> The following provinces have since then been admitted, viz. :—

In 1870. Manitoba and North-West Territories.

„ 1871. British Columbia.

„ 1873. Prince Edward Island.

Newfoundland still remains outside.

The Act declares that the executive government of Canada, together with supreme command over all naval and military forces, continues to be vested in the Queen. A Privy Council for Canada was instituted, and all powers and functions then vested in the Governors and Executive Councils of the several amalgamated provinces were by the Act vested in the Governor-General and the Privy Council. The Act also provides that there shall be "One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, consisting of members nominated by the Crown for life, and the House of Commons." In each province also there was to be a Lieutenant-Governor, appointed by the Governor-General, an Executive and a Legislature, and these minor governments were to fulfil, each within the sphere of subjects allotted to it, the duties and functions performed by the Governor-General and the Dominion Ministry and Parliament in the affairs of the whole Dominion. No attempt was made to construct the Provincial Legislatures on a uniform scheme. By the Act of 1867 the Ontario Legislature was to consist of a single House, that of Quebec of two Chambers, and as the provinces have the power to alter their constitutions, except as regards the office of Lieutenant-Governor, plenty of variety may be expected in the future.

The Act of 1867 makes clear the intention that both in the case of the Dominion Government, and the provincial Governments, the full modern working principles of the British Constitution were to prevail. These principles had already been established in Canada. The most important novelty in the Act of 1867 consisted in the distribution of powers between the Federal Parliament and the Provincial Legislatures.

This important delimitation was effected in clauses 91 to 95 of the Act, which are printed in full in the Appendix to the present book. Section 91 of the Act, provides that it "shall be lawful for the Queen, by and with the assent of the Senate and House of Commons to make laws for the peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces." For greater clearness or certainty twenty-eight classes of subjects thus falling within the general powers of the Dominion Parliament are then specified. Section 92 states sixteen classes of subjects exclusively given to the local Legislatures. It must be carefully observed that the twenty-eight classes of subjects specified as belonging to the Central Parliament are to be taken as leading examples only, and not as exhausting the general powers of that Parliament; while, on the other hand, the Provincial Legislatures have no powers outside the classes of subjects specifically assigned to their jurisdiction.

To the Central Parliament the Act specifically assigns all questions of the public debt and property, regulation of trade and commerce, the raising of money by any mode or system of taxation, customs and excise, currency, coinage, and banking laws, postal arrangements, census and other statistics, the enactment of criminal law, marriage and divorce, the laws of bankruptcy, patents and copyright, questions of naturalisation and aliens, the regulation of Indians and Indian reserves; within their province also fall all matters relating to military and naval service, coast control, and sea-coast and internal fisheries.

The chief subjects reserved to the Provincial Legis-

latures are the management and sale of public lands belonging to the province, the control of asylums, charitable and municipal institutions, and prisons, provincial roads, railways and public works, the solemnisation of marriage, property and civil rights, the administration of justice in the province, and regulation of civil proceedings, and, subject to certain guarantees for the protection of religious minorities, education. The Provincial Legislature has also the power of direct taxation, though the Dominion Parliament can also impose direct taxation if it desires.<sup>1</sup> The Provincial Legislature may also make laws with regard to Agriculture and Immigration within their areas, but not so as to be repugnant to any Acts which the Parliament of Canada may, under their general powers, pass on the same subjects. The power of amending their own constitutions has also been entrusted to the Provincial Legislatures.

Just as an absolute monarchy is a much simpler political machine than a form of government which guarantees the rights and liberties of the subjects, so also a country in which there is but a single legislative power has a constitution simpler and more easy to understand than one in which a federal system prevails.<sup>2</sup> The relations between the central and provincial powers, and the border line between their respective spheres of action, are often delicate and difficult to define. An original constitution like that of the United States of America, or that embodied in

<sup>1</sup> Consequently the Judicial Committee of the Privy Council has had to define "direct taxation." It has been held to include licences.

<sup>2</sup> M. Laveye says, in his *Essai sur les Formes de Gouvernement*: "On pourrait même formuler ce principe que plus un régime politique est simple plus il se rapproche à l'absolutisme ; au contraire plus il donne de garanties à la liberté plus il est compliqué. Rien n'est aussi simple que le despotisme orientale, rien n'est plus compliqué que les institutions des États Unis."

the Dominion Act of 1867, can but mark out the broad lines of organisation. Mr. Story in his book on "The Constitution of the United States,"<sup>1</sup> justly remarks that—

"The erection of a new government, whatever care or wisdom may distinguish the work, cannot fail to originate questions of intricacy and nicety ; and these may, in a particular manner, be expected to flow from the establishment of a constitution founded upon the total or partial incorporation of a number of distinct sovereignties. Time alone can mature and perfect so compound a system, liquidate the meaning of all the parts, and adjust them to each other in an harmonious and consistent whole."

One question which, in the Canadian case, led to discussion, but may now be taken as settled, is that of the relation of Crown and Governor-General to provincial legislation. The Act of 1867 declares that the Governor-General may either assent to any Bill passed by the Dominion Parliament, or can withhold assent or reserve the Bill for the Queen's pleasure. Even when he assents the Bill can be annulled by the Queen in Council within two years after its passing. The Act made it clear that in the case of provincial enactments the Governor-General occupied in these respects, with regard to the Lieutenant-Governor and Legislature of the province, the same position as that occupied by the Queen in respect of the Governor-General and the Dominion Parliament. The provinces are, in this way, directly subordinated to a federal government instead of to imperial authority. The principle has been well established "that the Queen in Council claims no jurisdiction over provincial legislation,

<sup>1</sup> Fifth edition, vol. ii. p. 654.

that the only tribunal before which any provincial enactment could be questioned was that of the Governor-General, and that no imperial Secretary of State would undertake to advise an interference by the Crown with the action or determination of the Governor-General in such matters."<sup>1</sup> It is clear that the control of the Crown over the provinces is exercised not directly but indirectly through the Canadian Viceroy. But the Act did not make it clear whether in allowing or disallowing the Acts of Provincial Legislatures the Governor-General was to act as an imperial officer, subject to instructions from London, or, as in other matters, upon the advice and responsibility of his Dominion Ministers. There was some division of opinion upon this matter, but the Colonial Office has apparently acquiesced in the Canadian contention that the Governor-General must, in this respect also, act upon the advice of his Ministers.<sup>2</sup> In any case the Governors-General have, as a matter of fact, it seems, invariably followed this course. As the Imperial Ministry and not the Monarch are responsible for allowing or disallowing, in the last resort, Acts of the Dominion Parliament, so the Dominion Ministry and not the Governor-General are responsible for allowing or disallowing the Acts of Provincial Legislatures.

As to the principles which should govern the Canadian Viceroy in Council, or, in other words, the Dominion Cabinet, in exercising power over provincial legislation, Mr Todd's résumé is worth quoting, although since the practice of referring doubtful cases to the Supreme Court has been established, the

<sup>1</sup> Alpheus Todd, "Parliamentary Government in the British Colonies."

<sup>2</sup> There is a résumé of the discussion in Mr. Todd's book, p. 332, &c.

whole question of the veto has become of diminished importance :—

“In deciding upon the validity or expediency of provincial enactments, the Governor - General in Council has no arbitrary discretion. The decision of the Dominion Government upon all such questions must be in conformity with the letter and spirit of the British North America Act. That statute has been correctly termed the ‘great charter of our constitution.’ It recognises and guarantees to every province in the confederation the right of local self-government in all cases within the competency of the provincial authorities. *And it does not contemplate or justify any interference with the exclusive powers which it entrusts to the Legislatures of the several provinces*; except in regard to Acts which transcend the lawful bounds of provincial jurisdiction, or which assert a principle, or prefer a claim, that might injuriously affect the interests of any other portion of the Dominion, as in the case of Acts which diminish rights of minorities in the particular province in relation to education that had been conferred by law in any province prior to confederation.”<sup>1</sup>

It is not enough that the Dominion Government should disapprove of any particular provincial Act. In practice, says the author last quoted—

“As a rule the Dominion Government refrains from any interference with provincial legislation, so long as the Acts passed are clearly within the competency of the local authorities, unless they contain provisions which are open to objection upon grounds of public policy, as being calculated to affect injuriously the interests of the Dominion or of any particular portion thereof” (p. 366).

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<sup>1</sup> Todd's "Parliamentary Government in the British Colonies," p. 343.



Just, therefore, as "no mere calculations of political expediency or difference of opinion in regard to the policy of a colonial enactment would suffice to induce the Crown to veto the same, provided only it was within the legislative competency of the colony, and did not injuriously affect the interests of other parts of the Empire," so also "a similar restraint has been observed by the Dominion Government in its control over provincial legislation delegated to it by the Imperial Parliament."

As a matter of fact, a very small number of the Acts of Provincial Legislatures have been wholly disallowed by the Dominion Government, though many such Acts have been objected to by that Government, and, in consequence, repealed or amended by the Legislatures themselves.<sup>1</sup>

If provincial statutes are *ultrâ vires* their invalidity, even if they are not disallowed by the Dominion Government, can be decided, subject to appeal, by any court of law when cases arise upon them, and this has frequently occurred.

A Supreme Court of Appeal was established in Canada in 1875. It can entertain appeals from all Courts in the Dominion in civil and criminal cases. It also has jurisdiction in controversies between the Dominion of Canada and any province, or between any two or more provinces, or in suits in which the validity of any Dominion or provincial Acts shall be raised by a suitor, provided that the Court below deems such contention material. Under an amending Act of 1891, the Governor in Council has power to refer

<sup>1</sup> Between 1867 and 1878 the province of Ontario passed 1000 Acts, of which only three were disallowed. Quebec in the same period passed 812, of which two were disallowed.

to the Supreme Court "any important question of law or fact touching provincial legislation, or as to educational matters . . . or touching the constitutionality of any legislation of the Parliament of Canada, or any other matter with reference to which he sees fit to exercise this power." The Supreme Court hears all parties interested in questions so referred, and gives an opinion which, "although advisory only, shall for all purposes of appeal to her Majesty in Council be treated as a final judgment of the Court between parties." An instance of an important matter referred in this way to the Supreme Court, and afterwards by appeal to the Privy Council, was the question as to the remedial powers of the Dominion Government in the matter of the Manitoba educational grievance.

It is obvious that a Court of this character is very necessary in a federal constitution, for although the main division of power between the central and local authorities may be clear and well-defined, yet constant questions must arise upon the frontier line between these powers. In the United States the central government possesses no political veto over the measures of the State Legislatures. Hence the whole work of holding the balance between Federal rights and State rights throughout the rapidly changing conditions of a hundred years has devolved upon the Supreme Court, deciding principles upon cases as they arose. That tribunal, as a maker of constitutional law, holds a position of the greatest power and dignity. The Supreme Court of Canada arbitrates in the same kind of questions, deciding what Acts are *ultrâ vires* or *intrâ vires* the Dominion Parliament and Provincial Legislatures. It is not, however, like the Supreme Court of the United States, a final tribunal whose

judgments cannot be reversed, for an appeal can be made from its decisions to the Queen in Privy Council. As a matter of fact, the principles of division of power between the several authorities in Canada have been worked out in a series of cases heard by the Judicial Committee in Whitehall.<sup>1</sup> As in the United States, so now in the British Empire, a great school of constitutional lawyers is arising to meet the new problems involved in the federal system. The question of the constitutionality of a statute was a new one to English lawyers. The word itself is transatlantic in origin. In this country every Act of Parliament has been constitutional, because sovereignty is undivided, and concentrated in one supreme legislature. But when the Canadian federal system has been extended to South Africa as well as to Australia, when it is adopted, possibly, in the United Kingdom itself, and even, conceivably, for the whole Empire, questions of this kind will become of immense importance. The existing Canadian decisions may therefore prove to be the foundation of a vast superstructure of what might well be called imperial law, and they are of the greatest value and interest. An excellent study of the whole doctrine of *ultrâ vires* as applied to the relations of central and subordinate legislatures has been made by a member of the Canadian Bar, Mr. Lefroy, in his book called "Legislative Power in Canada."<sup>2</sup> A perusal of this book, with some refer-

<sup>1</sup> Section 45 of the Supreme Court of Canada Act, 1875 (Canadian Statutes) runs thus: "The judgment of the Supreme Court shall in all cases be final and conclusive, and no appeal shall be brought from any judgment or order of the Supreme Court to any Court of Appeal established by the Parliament of Great Britain and Ireland by which appeals or petitions to her Majesty in Council may be ordered to be heard, saving any right which her Majesty may be graciously pleased to exercise by virtue of her Royal Prerogative."

<sup>2</sup> Published at Toronto in 1897.

ence made to the original cases, may be recommended to any one who desires to understand more exactly the working of a federal constitution. I cannot here do more than refer to certain doctrines of chief importance which have been laid down by the Courts in interpretation of the Act of 1867.

The powers of the Dominion Parliament and those of the Provincial Legislatures alike proceed from an outside sovereign authority, the Imperial Parliament; nor do the provinces in any sense derive their political existences from the Dominion. The Dominion Parliament cannot by direct legislation take away from the Provincial Legislatures any power which the Imperial Parliament has given to them, nor can it bestow any power upon them which the Imperial Parliament has not given. Nor, of course, can a Provincial Legislature extend its own powers.

All the sovereign power within the Canadian territory, in so far as it does not conflict with any law made by the Imperial Parliament for the whole of the Queen's dominions (such as the law against slave-trading), is divided between the Dominion Parliament and the several Provincial Legislatures. The Federation Act "exhausts the whole range of legislative power, and whatever is not thereby given to the Provincial Legislatures rests with the Dominion Parliament."<sup>1</sup> The larger share by far belongs to the Dominion, but within its own sphere the Province enjoys "authority as plenary and as ample within the limits prescribed as the Imperial Parliament in the plenitude of its power possessed and could bestow."<sup>2</sup> The Province of Quebec, equally with the

<sup>1</sup> Judicial Committee in *Bank of Toronto v. Lambe*, 12 App. Ca., p. 587.

<sup>2</sup> Judicial Committee in *Hodge v. the Queen*, 9 App. Ca., p. 117.

Dominion of Canada, has vested in it (so long as the Act of 1867 stands unrepealed) a portion of sovereign power, and this it exercises not as a delegate of, or agent for, either the Imperial Parliament or the Dominion Parliament, but in the same sense as that in which either of those authorities exercise their powers.<sup>1</sup>

But while the powers of the Provincial Legislature are limited both to its prescribed subjects and to its territory, the powers of the Dominion Parliament are not, within Canada, limited by territory, and are non-existent there only where the subject matter is part of that *exclusively* allotted to the province.<sup>2</sup> A Canadian judge has said: "Before the laws enacted by the federal authority within the scope of its powers the provincial laws disappear; for these laws we have a quasi-legislative union; these laws are the local laws of the whole Dominion, and of each and every Province thereof. The Dominion as to such laws is but one country, having but one legislative power."<sup>3</sup>

The exact division of all legislative power between the Dominion and the Provincial Legislatures is easy to state as a principle, but not easily reduced to practice. In fact, a subject looked at from one point of view often falls within the sphere of the Dominion,

<sup>1</sup> Judicial Committee in *Hodge v. the Queen*, 9 App. Ca.

<sup>2</sup> The Judicial Committee of the Privy Council said in the Manitoba education case (1894):—"It must be remembered that the Provincial Legislature is not in all respects supreme within the province. Its legislative power is strictly limited. It can only deal with matters declared to be within its cognisance by the British North America Act as varied by the Manitoba Act. In relation to the subjects specified in section 92 of the British North America Act, and not falling within those set forth in section 91, the exclusive power of the Provincial Legislature may be said to be absolute."

<sup>3</sup> Taschereau, J., in 4 S.C.R., p. 307.

looked at from another, within that of a Provincial Legislature. In this way, for example, a law for local option in temperance passed by the Dominion Parliament under its general power of legislation for "the peace, order, and good government of Canada" clashed in its effects with certain legislation which appeared to be within the powers of a Provincial Legislature. In cases of such conflict "it may now be regarded as settled law that . . . the enactments of the Parliament of Canada, in so far as these are within its competency, must over-ride provincial legislation."<sup>1</sup>

The Dominion Parliament cannot expressly and directly repeal an Act, even if *ultrâ vires*, passed by a Provincial Legislature; but it can, under certain circumstances, indirectly supersede or invalidate a Provincial Act, even if *ultrâ vires*, by passing an Act upon the same subject. If Dominion and provincial legislation clash in this way it is for the judicial tribunals to decide which has the right to prevail. Suppose the case of an individual who resists the operation of a Dominion Act upon the ground that it is *ultrâ vires*. The duty of the Courts would be in the first place to inquire whether the subject of the Act was one of those exclusively assigned to the Provincial Legislatures. If not, it would hold good. If it did fall within the power of the Provincial Legislature the further question would arise whether any concurrent power in the same matter was vested in the Dominion Parliament, expressly or impliedly, so as to over-ride the provincial legislation,

<sup>1</sup> Liquor Prohibition Appeal, 1895, in 1896 A.C., pp. 366-67, 369. The Australian Commonwealth Act, 1900, expressly enacts this principle in section 109: "When a law of the State is inconsistent with a law of the Commonwealth the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid."

or whether the Dominion could properly legislate in the matter under their general power of legislating for the "peace, order, and good government" of Canada. Under this last head, the Courts may have to decide very difficult and delicate questions. It has been held that this general power of legislation, in addition to the enumerated powers vested in the Dominion Parliament by the Act of 1867, must be strictly confined to such matters as are unquestionably of national interest and importance, and must not trench upon any of the subjects enumerated in section 92 as within the scope of provincial legislation, unless the evils to be remedied have obtained such dimensions as to affect the body politic of the Dominion. To attach any other meaning to this general power would, the Privy Council said, "practically destroy the autonomy of the provinces. If it were once conceded that the Parliament of Canada has authority to make laws applicable to the whole Dominion, in relation to matters which in each province are substantially of local or private interest, upon the assumption that these matters also concern the peace, good order, and government of the Dominion, there is hardly a subject enumerated in section 92 upon which it might not legislate to the exclusion of the Provincial Legislatures."

The Judicial Committee added that great caution was necessary in distinguishing between that which is local and provincial and that which has ceased to be so, and has become matter of concern to the whole Dominion. For instance, they said, an Act restraining the right to carry or sell arms to young persons might be a matter of provincial legislation, but traffic in arms or the sale of them under such circumstances as to

raise a suspicion that they were to be used for seditious purposes, or for a raid against a foreign State, would properly fall within the control of the Canadian Parliament.<sup>1</sup>

Under a federal constitution a great deal of power rests with the judicial authorities. They are, as it were, the wardens of the marches between the sphere of central and that of provincial legislation, and can in border-line cases practically determine under which law men are to live. So, for instance, Chinamen forbidden to work in the mines of British Columbia by provincial legislation, have been, on judicial interpretation, enabled to do so under Dominion legislation. It may be fairly argued that the fact that these difficulties arise, that there is this increased possibility of litigation, that it should be doubtful sometimes whether a statute is valid or not till points have been decided in the Courts, is, to say the least, a defect of the qualities of a federal system. This may be admitted, but even under an unitarian constitution like that of the United Kingdom, almost every new statute gives rise to difficulties of application and interpretation, and the meaning is seldom clear until the statute has been enriched with the costly comments of the law-courts. A few more questions thus to be decided make small practical difference. It may be added that since the Dominion Government now has the power to refer dubious provincial statutes to the Supreme Court at the public cost on the question of constitutionality, uncertainty as to validity of laws and the cost to individuals of ascertaining it is likely to diminish.

<sup>1</sup> Judgment in the Liquor Prohibition Appeal, 1895 (1896 A.C., p. 366, &c.).



A comparison has often been made between the organisation of the federation called the United States and the federalised Dominion of Canada. The authors of the Canadian Constitution of 1867 were influenced by the experience of their neighbours, whose institutions had just been tested to the foundation by the civil war. The Canadians desired a closer bond, a stronger central power, and a smaller sphere of State rights. Canada was to be rather a nation divided into provinces than States united for certain purposes into a nation. It seems to the English mind that in the United States, a nation which, in many respects and in an increasing degree, is one by natural fusion, the internal differences of laws and administration are too great. It is possible that by the criminal law of New York State the punishment for murder may be death by electricity; in Texas it may be only two years' imprisonment. In Massachusetts it might be made impossible to obtain a divorce for any cause; while in Kentucky it might be sufficient to prove incompatibility of temper, and in Colorado it might be sufficient to produce an agreement to separate. No law of any State, however contrary to the general interests of the American nation, can be vetoed by the Central Government. The Federal Government has not the slightest voice in the appointment of the executive or judicial authorities in any State, so that administration and justice in any State are too largely dependent upon the local level of morality and opinion, and insufficiently swayed by more universal wisdom. One may add that the extent of State liberty cost America the most terrific civil war in history.

The makers of the Canadian Constitution took three

main precautions to avoid the ill consequences of over decentralisation. They gave to the Governor-General a Council a veto over provincial legislation; they substituted in all important judicial posts, and in the case of the second Chamber of the Dominion Parliament, the principle of appointment from above for that of election from below;<sup>1</sup> and they made strong the authority of the Central Parliament as against that of the Provincial Legislatures.

Under the declaratory Amendment 10 of the year 1789, "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States" are reserved to be "reserved to the States respectively, or to the people." In the Canadian Constitution of 1867, the opposite rule is adopted, and all powers not specifically assigned to the provinces are reserved to the Dominion, or to the Imperial Parliament.

The Canadian federal union of 1867, like that of the American States in the previous century, was in part a consolidation of separate legislatures and executives previously only connected through their relationship to the Crown and Imperial Parliament. But the United States arose out of a successful rebellion by a group of adjacent colonial provinces which, when they had broken with the English Crown, became for the moment independent and sovereign States. The Canadian Dominion arose by a peaceful evolution, whereby separate colonial provinces became provinces of a single nation, organically one and

<sup>1</sup> Under the Act of 1867 (section 96) the Governor-General is to appoint the Judges of the Superior, District, and County Courts in each province. The Australians have not followed this precedent. Under the Commonwealth Act (section 72) the Justices of the Federal Supreme Court, and such other Federal Courts as may be hereafter erected, are to be appointed by the Governor-General; other judicial appointments remain with the State authorities.

subject to the British Crown. The American Union is possessed of specific powers surrendered by States, which when they made the surrender were sovereign and independent. The Canadian Union derives its legal force from an outside power—the Imperial Parliament, which, acting on the wishes of the Canadians and sanctioning the previous agreement of the several provinces, divided from above the powers and functions of legislature and government into two classes, and gave the larger portion to the central bodies and authorities, and the smaller portion to the provincial.

The principle upon which the founders of the Dominion acted in this very important matter were well expressed by Lord Carnarvon in his speech introducing the Constitution Bill of 1867 into the House of Lords. He said :—

“ If, on the one hand, the central government be too strong, then there is risk that it may absorb the local action and that wholesome self-government by the provincial bodies which it is a matter both of good faith and political expediency to maintain. If, on the other hand, the central government is not strong enough, then arises a conflict of State rights and pretensions, cohesion is destroyed, and the effective vigour of the central authority is encroached upon. The real object which we have in view is to give to the central government those high functions and almost sovereign powers by which general principles and uniformity of legislation may be secured in those questions which are of common import to all the provinces, and, at the same time, to retain for each province so ample a measure of municipal liberty and self-government as will allow and indeed compel them to exercise those local powers which they can exercise with great advantage to the community.”

During the legislative union of Upper and Lower Canada there had been frequent complaints that Upper Canada contributed most of the revenue, but that Lower Canada enjoyed much the larger share of expenditure upon public works. It was contended, in favour of the separation of the provinces, that this grievance would cease. Lord Carnarvon said :—

“Henceforward, apart from the revenue raised for the common purposes of the confederation, local taxation and expenditure will depend upon the local authorities. Thus, all those complaints which must arise under the circumstances of such an union as now exists—complaints of partiality, of neglect, of mismanagement, of roads, of bridges, and those public works which are the very life of a young community—must cease. All local works will devolve upon local authorities, who in turn will be responsible to the taxpayers.”

It is a question whether the Canadian Constitution does not err upon the side of limiting too narrowly the area of provincial action. One would have thought, for instance, that it would have been better to entrust specifically to the Provincial Legislatures that liquor<sup>1</sup> question which has led to so much litigation. If, however, the Canadians should desire at any time to extend the area of provincial power, it would be open to them to submit to the Imperial Parliament an Act amending that of 1867.

It is well to notice here, in passing, two other differences between the system of Canada and that of the United States, not so strictly relevant to the object of this book as is the division of power between the

<sup>1</sup> The Australian Commonwealth Act of 1900 makes it clear that, although excise is to be a branch of Commonwealth revenue, the power of liquor legislation is to remain with the States (Sect. 113).

Central Government and the States or provinces. The first of these is that the Canadian follows the spirit of the English Constitution, and entrusts executive power to a Committee of Ministers sitting in Parliament, constructed and led by the statesman who, for the time being, most largely commands the confidence of the popular Chamber. The Premier is, virtually, nominated by the party which is in a majority in the House of Commons, and is formally called to office by the Viceroy, who represents the Crown. In the United States, executive government is in the hands of the President, who combines the office of King and Prime Minister. He is elected in theory by a College of Electors chosen for that purpose, but in practice by the whole electorate of the nation, voting by States as electoral divisions. The President is independent of the will of Congress, except that he cannot declare war without their consent; his Ministers do not hold seats in Congress; he makes federal appointments, subject to a check possessed by the Senate.

The second of these great differences between the United States and Canada is that the power of amending the constitution is reserved to the people of the United States, a special process being devised to prevent any such change being made without the consent of the great majority of the nation and States. The Canadian Constitution, being the act of the Imperial Parliament, can only be amended by that Parliament, or by the Canadian Parliament, with the permission and authority of the Imperial Parliament. In practice, no doubt, a direct "reference" to the Canadian electorate would precede any such amendment, and the Imperial Parliament would sanction almost any amendment upon which the Canadians were agreed.

The Australian Federal Constitution, sanctioned by the Imperial Parliament in the year 1900, stands between the Constitution of Canada and that of the United States.<sup>1</sup> Like the Canadian, it follows the fundamental English principle of government by Ministers belonging to<sup>2</sup> and dependent upon Parliament. In other respects the Australians have followed more nearly the American than the Canadian model. In Canada every power not expressly given to the Provincial Legislatures is reserved to the Dominion Parliament. In Australia, as in the United States, the reverse holds good, and the Commonwealth Parliament has those powers only which are expressly assigned to it by the constitution.<sup>3</sup> An Australian State, again, resembles an American State, and differs from a Canadian province, in that the Commonwealth Government has no veto over State legislation.

In Canada the Senators are nominated for life by the Crown in theory, and in practice by the Dominion Premier, and are taken from the several provinces in proportion to their population. Australian senators are elected by the same electors as members of the other Chamber, but each State votes for this purpose as a single constituency. Each State, moreover, whether large or small in population, returns the same number of senators.<sup>4</sup> It is clear that the

<sup>1</sup> See Appendix II.

<sup>2</sup> See Appendix II., section 64.

<sup>3</sup> Section 107: "Every power of the Parliament of a colony which has become or becomes a State, shall, unless it is by this constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth." The powers *exclusively* vested in the Commonwealth Parliament by the Constitution are few (sect. 52), but the subjects in which that Parliament has *power to make laws* are numerous (sect. 51), and by virtue of section 109 such laws, when made, will over-ride any State law which is inconsistent with them. Till they are made, a State can continue to legislate on the subject (section 108).

<sup>4</sup> See section 7, &c.

Australian Senate will be a more powerful body than the Canadian, and more nearly resemble that of the United States.

In Australia also, as in the United States, there are special provisions for the amendment of the constitution. A law amending the constitution must pass both Houses and then be submitted in each State to the vote of the electorate. If either House twice rejects an amendment proposed by the other, the fate of the amendment is to be decided by reference to the same electorate. "And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent."<sup>1</sup> Thus the Imperial Parliament in sanctioning the Australian Constitution has surrendered its power of amending that constitution, although in theory it retains the power of amending the Canadian Constitution, and its formal consent would be necessary in the latter case.

It should be observed that the Conferences in which the Canadian Constitution of 1867 was prepared, were in constant communication with representatives of the Imperial Government and the Colonial Office. The Australians, on the contrary, prepared their constitution without asking or receiving any advice from the Home Government. The federating Colonies acted in every way as spontaneously as the States which entered into the American Union, and the decisions of their representatives were confirmed in each colony by a direct vote of the electorate. The result has been that the Australian States retain a sphere wider than that of the Canadian Provinces.

<sup>1</sup> Constitution, Art. 128.

I have now dealt with the chief points in the history of the constitutional development of the Canadian Dominion. I am aware that the working of the provincial institutions subsequently to 1867 has offered sides open to criticism.<sup>1</sup> It is, perhaps, unavoidable that in young and free communities there should not be at once the high standard of political integrity and sagacity which has been evolved, after much of the quite contrary kind, by centuries of national life in England. Yet, on the whole, Canada has little cause for self-reproach. Certainly her main difficulty of old days, that of enabling people of very different race, history, and religion to live peaceably side by side, has been overcome.

There is a special satisfaction in knowing that, under this system of provincial Home Rule within the Dominion, the old religious bitterness, which so long was an element in the distractions of Lower Canada, has given place to goodwill. A very striking speech was made in the Dominion Parliament in 1889 by Mr. Colby, a Protestant member for a Protestant district in the province of Quebec.<sup>2</sup> He said :—

“ I believe that there is nowhere in this Dominion a body of Protestants more willing to make sacrifices for the preservation of their rights than are the Protestants of the province of Quebec. I do not believe that they are disloyal to Protestant ideas. But the Protestants of the province of Quebec have lived for many years in close relation and contact with their fellow-citizens of a different religion, and many prejudices which the one might feel against the other

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<sup>1</sup> Such criticism has been unsparingly applied to his country by Mr. Goldwin Smith in his book on Canada.

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have been worn away by contact. The Protestants and the Catholics of the province of Quebec live happily together upon mutually respecting terms, each respecting even the other's sensibilities and prejudices, and co-operating together, working together for what they believe to be the common interest, without jealousy, without friction, without oversensitiveness; recognising the good things in each other; if they differ, quietly differing, and not making themselves obnoxious to each other. These are the relations which have grown out of long years of personal contact, living together side by side, meeting and knowing each other. That is a happy condition of affairs, but it is an actual condition of affairs in those parts of the province with which I am perfectly acquainted. The Protestants of Quebec—and I think I fairly voice their sentiments—acknowledge the fact, and, if they do not acknowledge it, it is a fact, that never was a minority in any country treated with more justice, with more liberality, with more generosity, than the Protestant minority in the province of Quebec have been treated. They have always had the control of affairs that most concerned them—those matters connected with education and other matters concerning which the Protestants were most interested as Protestants, and they have had as much control over such questions as if they had had an entire Legislature of Protestants; they have not been meddled with, they have been simply permitted to manage their own affairs, and they have not felt that they were in a minority in any instance that I recollect.”

No contrast could be much greater than that between the social relations in Lower Canada, testified to by Mr. Colby, and that depicted in Lord Durham's report as existing fifty years earlier. It is a remarkable testimony to the healing effects of freedom, equality, and removal of artificial ascendancy.

Lord Durham, when he arrived in Canada in 1838, found the country not only divided by great racial and religious bitterness, but in a condition of industrial and economic stagnation which presented a great contrast to the lively prosperity of the neighbouring States of America. There can be no doubt as to the immense advance made by Canada under the subsequent forms of political organisation, and especially since 1867, in spite of the obstacles to her development which have for many years, and especially since 1885, been due to the unfriendly commercial policy, soon, it may be hoped, to be mitigated, of the United States. But political institutions may have more than the negative merit of not hindering progress. A Government, whether autocratic or popular, may do much to lead and guide the social and economic advance. No better work has been done in Canada than that by which the Central and Provincial Departments of Agriculture, acting in concert or separately, have afforded assistance and advice to the farmers by means of the skilled experts whom they can enlist in public service, and the facilities for centralising information and distributing it which they possess.<sup>1</sup>

The greatest material work done in Canada has been that of railway construction. In this there has been a happy co-operation between Government and private enterprise. In 1867 there were only 2087 miles of railway in the whole Dominion. In 1897 there were 16,687 miles, constructed by capital of which about £40,000,000 had been contributed by the Dominion and Provincial Governments. In this year

<sup>1</sup> See "Report of Minister of Agriculture for the Dominion of Canada 1897"; "Reports on Experimental Farms for 1897," &c.

the proportions in which the total railway capital had been subscribed stood as follows :—<sup>1</sup>

Ordinary share capital . . . . .	28.25 per cent.
Bonded debt . . . . .	37.84 ”
Dominion Government aid . . . . .	16.27 ”
Preference share capital . . . . .	11.63 ”
Provincial Government aid . . . . .	3.37 ”
Municipal aid . . . . .	1.69 ”
Other sources . . . . .	0.95 ”

In these and other ways the Canadians, released hitherto from the complexity of State affairs, military, naval, diplomatic, Indian, and Colonial, which consume so much of the energy of the British Government and Parliament, are able to devote their whole strength to the development of their magnificent domain. The provincial institutions also release the statesmen and Legislature of the Dominion from a number of minor local matters which have to be settled in this country by the Imperial Parliament, while, at the same time, these institutions supply centres of energy in the sphere of action which lies between that of the Dominion and that, also existing in Canada in a very complete form, of the County or Municipal Council.

The Canadians look forward with a cheerful hopefulness. In his Budget speech at Ottawa in 1898, Mr. Fielding, the Minister of Finance, said :—

“ At no time in the history of the Dominion have the people been more united, more harmonious, and more hopeful and confident respecting the future of our country. In the centres of manufactures, trade and commerce, there is an activity which tells of con-

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<sup>1</sup> See “Statistical Year-Book of Canada” for 1897 (published 1898), p. 299.

fidence in the present and in the future. The great agricultural interests, which are the foundation of our country's prosperity, are on a better footing than for many years past. Encouraged to produce not only for the home markets but for the markets of the world, our farmers everywhere are applying themselves to their work with intelligence and skill. The ships which have come to our seaports during the past year are insufficient to carry the increasing volume of commerce, and the shipwrights of the world are busy in constructing new vessels for this trade. Our long delayed canal enlargements are being pressed forward to early completion, and give promise of affording increased facilities for the transportation of the products of the great west to our shipping ports. Railway enterprises east and west are actively assisting in the good work. The fishermen of our Atlantic and Pacific coasts continue to reap the rich harvest of the sea. In all directions we find an extraordinary development of the mineral wealth of the Dominion. The powerful magnet of gold, which is found in several quarters of the Dominion, is doing much to attract capital and population. The new mines in the province of Ontario give promise of great development and profit. In the east, the mines of Nova Scotia, which have been working with considerable success for many years, are to-day giving most satisfactory results, and new discoveries are constantly being made. In the west, the province of British Columbia is steadily growing in fame as a rich mining country. The northern regions of our Dominion, which were long regarded as of little value, have become sources of boundless wealth. In nearly every department of industry in Canada there is activity and confidence."

Thus Canada stands, hopeful and strong, providing, if not much superfluous wealth and luxury, yet that which is needful, subsistence and healthy occupation

for a great number of households, with vast possibilities of economic development. Canada is well organised with forms for national, provincial, and municipal energy; a nation, yet peacefully combining two unlike races—a nation, yet part of an Empire. Canada, as Tennyson wrote, is “daughter in her mother’s house, and mistress in her own.” So far have been solved successfully the twin problems of reconciling imperial connection with national freedom, and national power with sub-national or provincial self-government. Canada is a loyal and free nation amid the nations of the Empire; Quebec a loyal and free province amid the provinces of the Dominion.

**PART III**  
**THE UNITED KINGDOM**





# PART III

## THE UNITED KINGDOM

### CHAPTER I

#### THE UNION OF 1801 <sup>1</sup>

IN the year 1719 there was a dispute whether a law appeal from the Irish House of Lords could be carried across the Channel. The British Parliament took the occasion to pass "An Act for better securing the dependency of the Kingdom of Ireland upon the Crown of Great Britain." This Act declared—

"That the Kingdom of Ireland hath been, is, and of right ought to be, subordinate unto and dependent on the Imperial Crown of Great Britain, as being inseparably united and annexed thereunto, and that the King's Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons of Great Britain in Parliament assembled, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the kingdom and people of Ireland."<sup>2</sup>

Five years later, in 1724, Dean Swift, resisting in his "Draper's Letters" the insidious fiscal encroachment of "Wood's halfpence," boldly traversed the British claim to legislative paramountcy. He wrote, on the 11th November:—

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<sup>1</sup> The Act was passed in Great Britain and Ireland in 1800, but came into force 1st January 1801.

<sup>2</sup> 6 Geo. I. c. 5.

“Those who come over hither to us from England, and some weak people among ourselves, whenever in discourse we make mention of liberty and property, shake their heads, and tell us that Ireland is a depending kingdom, as if they would seem, by this phrase, to intend that the people of Ireland is in some state of slavery or dependence different from those of England. Whereas a depending kingdom is a modern term of art, unknown, as I have heard, to all ancient civilians and writers upon government, and Ireland is, on the contrary, called in some statutes an Imperial Crown, as held only from God, which is as high a style as any kingdom is capable of receiving. Therefore, by this expression, ‘a depending kingdom,’ there is no more understood than that, by a statute made here in the 33 Henry VIII., the king and his successors are to be Kings Imperial of this realm as united and knit to the Imperial Crown of England. I have looked over all the English and Irish statutes without finding any law that makes Ireland depend upon England any more than England does upon Ireland; for the law was made by our own Parliament, and our ancestors then were not such fools as to bring themselves under I know not what dependence, which is now talked of, without any ground of law, reason, or common-sense.”

The Dean altogether ignores the British Act of 1719, passed by the hated Whigs; but he admits:—

“It is true that, within the memory of man, the Parliament of England have sometimes assumed the power of binding this kingdom by laws enacted there, wherein they were at first openly opposed (as far as truth, reason, and justice are capable of opposing) by the famous Mr. Molyneux, an English gentleman born here, as well as by several of the greatest patriots and best Whigs in England; but the love and torrent of power prevailed. Indeed, the arguments on both

sides were invincible, for, *in reason*, all government without the consent of the governed is the very definition of slavery; but, *in fact*, eleven men well-armed will certainly subdue one in his shirt."

Most Englishmen denied that the American Colonies were distinct from the realm of Great Britain, and they refused to admit that the colonial Assemblies had the status of Parliaments. No one denied that Ireland was a distinct kingdom with a real if "depending" Parliament of its own. Therefore the advocates of the American cause naturally made much of the case of Ireland, as an existing example of the position which should, they thought, be conceded to the Colonies. Just as now the Irish look to the Colonies for a precedent of Home Rule, so then the Colonies looked to Ireland. Lord Shelburne said in the House of Lords:—

"I have always thought, and ever shall think, that both Ireland and America are subordinate to this country, but I shall likewise retain my former opinion that they have rights, the free and unimpaired exercise of which should be preserved inviolate. The principal fundamental right is that of granting their own money."

So also Burke, himself an Irishman, after tracing the history of Ireland,<sup>1</sup> said:—

"You changed the people; you altered the religion; but you never touched the form or the vital substance of free government in that kingdom. You deposed kings; you restored them; you altered the succession to their as well as to your own crown; but you never altered their constitution; the prin-

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<sup>1</sup> In his speech on "Conciliation with America."

ciple of which was respected by usurpation, restored with the restoration of monarchy, and established, I trust for ever, by the glorious Revolution. This has made Ireland the great and flourishing kingdom it is; and from a disgrace and burthen intolerable to this nation has rendered her a principal part of our strength and ornament. This country cannot be said to have ever formally taxed her."

And again, he said :—

"Ireland has ever had from the beginning a separate but not an independent Legislature, which, far from distracting, promoted the union of the whole."

But while no attempt was made by the British Parliament to tax Ireland, the English did feel it to be a grievance that the Irish, though supporting some regiments for the royal service, made no contribution to naval and other expenditure. For this reason some English writers advocated the incorporating union many years before it took place. So Sir M. Dexter wrote in 1751 :—

"By a union with Ireland the taxes on Britain will be lessened, whereby they will contribute to make our goods cheaper, and consequently more vendible."

And Postlethwayt wrote in 1767, the year of the tea duty :—

"By the Union Ireland would soon be enabled to pay a million a year towards the taxes of Great Britain, beside the full support of their own establishment. And would not this in time of war greatly contribute to raise the supplies within the year?"

The Irish statute of Henry VII. (Poyning's Act) gave all initiative in Irish legislation to the king

and Council in England. The humiliating Act of 1719 asserted in set terms the sovereignty of the British Parliament, and the Navigation Laws and the whole commercial policy pursued at Westminster were deliberately injurious to Irish interests. All this made the Protestant oligarchy dominant in Ireland feel their cause to be substantially the same as that of the Americans. When, during the last years of the American War, England was fighting not only her revolted Colonies, but France, Spain, and Holland, backed by the somewhat more than passive sympathy of other Powers, the Irish Protestants, under cover of the Volunteer movement, assumed an attitude foreboding rebellion.<sup>1</sup> The English Government drank the cup of forced repentance. They were obliged first to relax the commercial system in favour of Ireland, and next, in 1782, to repeal both the Poyning's Act and the Declaratory Act of 1719. A mere repeal was not sufficient to satisfy the Irish Protestants, and, at their instance, an Act was passed at Westminster in 1783 expressly declaring that the

“Right claimed by the people of Ireland to be bound by laws enacted by his Majesty and the Parliament of that kingdom in all cases whatsoever . . . shall be and it is hereby declared to be established

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<sup>1</sup> Dr. Johnson, at this time conversing with an Irish gentleman, said : “After all, sir, though I hold the Irish to be rebels, I don't think they have been so very wrong ; but you know you compelled our Parliament, by force of arms, to pass an Act in your favour. That I call rebellion.” “But, doctor,” said I, “did the Irish claim anything that ought not to have been granted ?” “Sir, I won't dispute that matter with you, but what I insist upon is that the mode of requisition was rebellious.” “Well, doctor, but let me ask you one more question, Do you think that Ireland would have obtained what it has got by any other means ?” “Sir,” says he candidly, “I believe it would not. However, a wise Government should not grant even a claim of justice if an attempt is made to extort it by force.”—“Anecdotes by the Rev. Thomas Campbell.”

and ascertained for ever, and shall at no time hereafter be questioned or questionable."

The question immediately arose in what way two kingdoms united by so slender a bond were to be driven in double harness. The question was especially difficult in days when Free Trade, now an orthodox dogma, was yet but an heretical opinion. Would not Ireland, now free to adopt her own system of commercial and navigation laws, prove, with cheaper labour and lighter taxation, a formidable trade rival to England? An attempt was made by the Shelburne Ministry in 1782 to obtain (as a *quid pro quo* for the repeal of the Declaratory Act of 1719) an arrangement by which, as the Duke of Portland, then Viceroy in Ireland, wrote to Lord Shelburne on the 6th June 1782—

"The superintending power and supremacy of Great Britain in all matters of State and general commerce will be effectually acknowledged, a share of the expense of carrying on a defensive or offensive war . . . borne by Ireland in proportion to the state of her abilities, and commercial regulations judged necessary by Great Britain be adopted by Ireland."<sup>1</sup>

This arrangement, however, could not be brought to pass. Three years later Mr. Pitt attempted to effect a treaty by which Ireland should be given full free trade with England, and should make in return a regular contribution towards naval and military expenses. The leading principle, said Pitt, in his speech of May 12, 1785, was—

"That a treaty should be concluded with Ireland by which that country should be put on a fair, equal,

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<sup>1</sup> "Life of Lord Shelburne," vol. iii. p. 149.

and impartial footing with Great Britain in point of commerce with respect to foreign countries and to our Colonies, and as to the mutual intercourse between each other, that this equality should extend to manufactures, importation and exportation, and that Ireland in return for this concession should contribute her share towards the protection and security of the general commerce of the Empire."

In order to effect the last-mentioned object, Pitt proposed that any surplus of the Irish "hereditary revenue" (consisting of certain fixed duties) over and above £656,000 a year should be appropriated to the support of the naval force of the Empire, as a "provision proportioned to the growing prosperity of that kingdom towards defraying in time of peace the necessary expenses of protecting the trade and general interests of the Empire." The proposal was fair. Ireland was to be admitted to a full share in the trade protected by the naval strength, and in return was to pass in her Parliament all laws relating to commerce passed in the British Parliament, and to make a regular contribution towards the defence of the two kingdoms and their commerce.<sup>1</sup> The nearest modern approach to an arrangement of this kind is to be found in the Austrian Empire. Austria and Hungary contribute to imperial expenditure in certain proportions fixed by a treaty (*ausgleich*) periodically revised. It is a method difficult to carry out, because of the difficulty of assessing the right proportions of contribution,

<sup>1</sup> The provision that the Irish Parliament was to pass all navigation and commercial laws which had been passed by the British Parliament did not form part of Pitt's original propositions. It was added later, together with other modifications, to appease English commercial feeling. This addition was the chief cause of the rejection of the propositions in Ireland. Grattan had approved the original idea, exchange of the surplus of the Irish hereditary revenue for free trade.



and a temporary financial arrangement of the kind which followed the Union of Great Britain and Ireland soon broke down. Pitt's attempt in 1785 to make Great Britain and Ireland work together for commercial, military, and naval purposes, without political union under a common Parliament, was defeated by political jealousies in Ireland and by commercial jealousies in England. The English feeling was well set forth in a petition from Liverpool, which ran thus :—

“That an equal participation in all the privileges and advantages of a community should, by every rule of right, reason, and justice, include in it a mutual obligation to encourage, maintain, and defend these rights, and to contribute equally to their support; that the island of Great Britain, when first united in legislation, manufactures, navigation, and commerce, became united also in taxation towards the general support of the common good; that admission of any neighbouring kingdom to a full share in all these rights without subjecting her to sustain a due proportion of the general burthen too, would be a great deviation from those principles upon which the union of this island was wisely founded.”

The idea that Ireland had lighter taxation, and therefore cheaper labour, had long weighed heavily on the British mercantile mind, and was at the bottom of the resistance to relaxation of the commercial policy as against Ireland, unless coupled with a political union and equal taxation. Burke, defending his support of the measures of relaxation, in 1778 wrote to his Bristol constituents :—

“I know it is said that the people of Ireland do not pay the same taxes, and therefore ought not in

equity to enjoy the same benefits with this country. . . . To that argument of equal taxation I can only say that Ireland bears as many taxes as those who are the best judges of her powers are of opinion she can bear. To bear more she must have more ability, and, in the order of nature, the advantage must *precede* the charge."

On the other side of the Channel, Grattan, in the Irish Parliament, denounced the Commercial Propositions on the ground that such a treaty would deprive Ireland of her free will in commercial policy and of the full disposal of her national revenue. He said :—

"It is an union, a creeping and incipient union, a virtual union establishing one will in the general concerns of commerce and navigation, and reposing that will in the Parliament of Great Britain ; an union where our Parliament preserves its existence after it has lost its authority, and our people are to pay for a parliamentary establishment without any proportion of parliamentary representation. In opposing the Bill, I consider myself to be opposing an union *in limine*."<sup>1</sup>

The project of partial union for common purposes involved in the Commercial Propositions was abandoned after a hostile vote in the Irish House of Commons. This was looked at as a great victory in Ireland, and was celebrated by popular rejoicings at Dublin, but there is no doubt that this success of

<sup>1</sup> So Sheridan said in the British Parliament : "A new scheme of commercial arrangement is proposed to the Irish as a boon, and the surrender of their constitution is tacked on to it as a commercial regulation. Ireland, hardly escaped from harsh trammels and severe discipline, is treated like a high-mettled horse, hard to catch ; and the Irish Secretary is to return to the field, soothing and coaxing him, with a sieve of provender in one hand, but with a bridle in the other, ready to slip over his head while he is snapping at the food."

the national party in the Protestant Irish Parliament hastened the day of the Legislative Union.

The debates of 1785 and their result created in the commercial mind, which has always guided English policy, a strong predisposition to think that the independence of the Irish Parliament could be only an interim arrangement, due to the stress of circumstances in which it arose, and that, logically, there was no tenable ground between the old supremacy of the British Parliament in matters of trade and commerce and a complete "melting down," as one English speaker expressed it, "of the Legislature of the inferior into that of the superior kingdom."

Although Ireland has possessed a Parliament, and between 1782 and 1800 a theoretically free Parliament, there has never yet been at any time an executive government placed in power or deposed by the Irish Parliament and electorate. Indeed, in the eighteenth century this law of modern politics hardly prevailed in England itself. Ministers were still really, as well as formally, appointed and dismissed by the king, subject to the indirect influence of Parliament, and it would be almost more true to say that Ministers then made a majority in the House of Commons by means of influence over borough-owners than to say that a majority of the House of Commons made the Ministers. In Ireland this was still more truly the case. The sapient Boswell, not a bad medium of ideas in the air, arguing with Dr. Johnson, on the 23rd September 1777, contended that—

"America might be very well governed and made to yield sufficient revenue by means of influence, *as exemplified in Ireland*, while the people might be pleased with the imagination of their participating in

the British Constitution by having a body of representatives without whose consent money could not be extracted from them.”<sup>1</sup>

After 1782, as before, the Irish executive government was carried on, though with increased difficulty, by ministers appointed from England and controlled by the English Government. A working majority in the Irish Parliament was secured by means of influence exercised over the owners of small and rotten boroughs, and by other devices. This was sufficient except in times when national feeling ran very high. The party led by Grattan advocated the reform of Parliament and the emancipation of Roman Catholics, and so far prevailed that, in 1793, Catholics were admitted to the franchise, and, in 1795, were near being admitted to sit in Parliament. It became a question whether, if the Irish Legislature was to be made more nearly representative of the Irish nation, it would be possible to govern Ireland as before, or, indeed, to preserve the political connection between the two islands. Pitt himself, at the beginning of his political career, had been in favour of liberal reforms. Their immediate possibility was diminished by the struggle against the French Revolution, but he knew full well that religious equality and parliamentary reform could not be for ever postponed, either in Ireland or in Great Britain.

Yet so melancholy had been the history, and so deep were the social, racial, and religious divisions in Ireland, that no British statesman could regard without fear the prospect of Catholic emancipation and parlia-

<sup>1</sup> An argument which enraged the sage and threw him into a “violent agitation,” because he could not endure to hear the doctrine that the American Assemblies were virtually Parliaments. Boswell’s evening, which had begun well, was quite spoiled.

mentary reform in Ireland, so long as that country had an independent Legislature. In Ireland there was an established and richly endowed Church belonging to a Protestant minority; the land was owned by a class of men whose original title was for the most part confiscation, and whom the Irish people had never ceased to regard as usurpers. How would these questions be treated by a Catholic majority in a reformed Irish Parliament? The Duke of Rutland, Irish Viceroy, wrote to Pitt, on the 16th of June 1784:—

“The question of reform, should it be carried in England, would tend greatly to increase our difficulties, and I do not see how it would be evaded. In England it is a delicate question, but in this country it is difficult and dangerous in the last degree. The views of the Catholics render it extremely hazardous.”

To give a fair franchise to all Ireland, and to allow Catholics to enter the Irish Parliament, seemed to be like a sudden opening of a dam behind which waters had long been pent up. But if the Irish people were fused politically with the more numerous Protestant population of Great Britain it would be possible to concede Catholic emancipation without danger to the interests of the Irish Protestant minority. The path towards redress of Irish wrongs seemed to Pitt to lie through legislative union. To permit the continuance of the Irish Parliament involved either non-redress of Catholic disabilities, or the risk of social and religious revolution. On the 18th November 1792, Pitt wrote as follows to the Irish Viceroy: <sup>1</sup>—

“The idea of the present fermentation gradually bringing both parties to think of an union with this

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<sup>1</sup> Quoted by Mr. Lecky, “Hist.” vi. p. 513.

country has long been in my mind. I hardly dare flatter myself with the hope of its taking place; but I believe it, though itself not easy to be accomplished, to be the only solution for other and greater difficulties. The admission of the Catholics to the share of the suffrage could not then be dangerous. The Protestant interest—in point of power, property, and Church interest—would then be secure, because the decided majority of the supreme legislature would necessarily be Protestant.”

The fact that in the following year, 1793, Irish Catholics were admitted to the electorate, though not yet to sit in Parliament, no doubt strengthened Pitt's conviction of the necessity of an union. Some of the leading Whigs who joined the Government in 1795, and among them Lord Fitzwilliam, were in favour of the admission of the Catholics to sit in the Irish Parliament. For a moment, when Lord Fitzwilliam was sent as Viceroy to Ireland, the British Government seemed to have made up its mind to take this step. What then happened is not very clear. Either a sudden change of policy took place, or Lord Fitzwilliam had misunderstood his instructions and the intention of Government. He was recalled, as one committed to a policy of which Government disapproved; the chance of nationalising the Irish Parliament vanished, and the policy of legislative union only awaited its hour. That hour struck in 1798, year of the formidable attempt of Hoche upon the southern coast of Ireland, the fierce though local rebellion in the south-east, and the French raid in the west.

On the 22nd January 1799, the following fateful message was delivered to the British House of Commons:—

“His Majesty is persuaded that the unremitting industry with which our enemies persevere in their avowed design of effecting the separation of Ireland from this kingdom cannot fail to engage the particular attention of Parliament; and his Majesty recommends it to the House to consider of the most effectual means of counteracting and finally defeating this design; and he trusts that a review of all the circumstances which have lately occurred (joined to the sentiment of mutual affection and common interest) will dispose the Parliaments of both kingdoms to provide, in the manner which they shall judge most expedient, for settling such a complete and final adjustment as may best tend to improve and perpetuate a connection essential for their common security, and to augment and consolidate the strength, power, and resources of the British Empire.”

The resolutions forming the basis of the union were then introduced in the British and Irish Parliaments, but they were so unfavourably received in the latter that a year had to be spent in convincing, by promises of cash and titles, recalcitrant owners of Irish pocket boroughs.

The Irish Chancellor, Lord Clare, made a powerful speech on the 10th February 1800 in the Irish House of Lords. He insisted, with an outspokenness almost brutal, upon certain aspects of the question. He described the wrongs done to the sentiments and interests of the Irish masses by the ascendant Protestant minority, planted upon Irish soil by violent methods in order to serve the purpose of an English garrison; he showed how this garrison was entirely dependent upon English support for defence against native revenge; he pointed out that the position had been rendered impossible by the policy of opposition

to England and advocacy of reform pursued by Grattan's Parliament for the last twenty years ; and he drew the moral that in close union with Great Britain now lay the one hope of safety of the Irish Protestants and landed aristocracy.

This speech, so much admired by Mr. Froude, contained the following passage of striking frankness :—

“What then was the situation of Ireland at the Revolution, and what is it at this day? The whole power and property of the country has been conferred by successive monarchs of England upon an English colony, composed of three sects of English adventurers, who poured into this country at the termination of three successive rebellions. Confiscation is their common title, and from their first settlement they have been hemmed in on every side by the old inhabitants of the island, brooding over their discontents in sullen indignation. It is painful for me to go into this detail, but we have been for twenty years in a fever of intoxication, and must be stunned into sobriety. What, then, was the security of the English settlers for their physical existence at the Revolution, and what is the security of their descendants at this day? The powerful and commanding protection of Great Britain. If by any fatality it fails, you are at the mercy of the old inhabitants of the island.”

The semi-rebellious Protestants of 1782 and the reform party in the Irish Parliament seemed to Lord Clare like the fabled ape sawing at the bough on which he was seated.

These domestic reasons for the legislative union coincided with reasons connected with foreign affairs. England had been for seven years engaged in a war of principle against France, a country all the more dangerous to a slightly tempered oligarchy like that of



eighteenth century England because her democrats appealed to revolutionary feelings everywhere, and raised the war-cry of "equal rights" for all men. France had invaded Ireland with ideas and with material force, and in no country was there a more flagrant inequality of civic rights than in Ireland. It was necessary to concentrate as much as possible all the military and financial resources of the three kingdoms. But the Irish Parliament, so long as it existed, could refuse or diminish its military and financial assistance, and might even adopt a hostile attitude, as in 1782. At best the Irish Parliament contributed nothing to naval expenditure, except occasional grants when in good humour, and the Irish regiments were an insufficient quota in proportion to population. Irish military aid became a very different thing after the Union. The Duke of Wellington said in a speech in 1814 that at least half of his total forces during the Peninsular War had been drawn from the Catholic peasantry of Ireland. The financial resources and credit of Ireland were used to the uttermost during the war. At the close of it Ireland, which till then, under the terms of the Union, retained a distinct exchequer and financial system, was virtually bankrupt, and her enormous public debt had to be consolidated with that of Great Britain.

A still more cogent reason for the Union was that so long as an independent legislature existed in Dublin, English ministers could not feel secure of their power to provide against invasions of Ireland or rebellion there.<sup>1</sup> Mr. Pitt, in his speeches assumed

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that the only alternative to legislative union was the eventual separation of the two countries.

Then again, Pitt was a real disciple of Adam Smith, and truly anxious, as he showed himself to be in 1785, to abrogate all the residue of the English commercial policy hostile to Ireland, and to establish a system of perfect free trade as between the three kingdoms. But the Irish Parliament, since 1782, was pursuing a vigorous protective policy designed towards the building up of Irish industries, much to the alarm of English manufacturers, who feared Irish cheap labour and light taxation.

Pitt wished to secure commercial, military, naval, and fiscal unity between the two islands, and to avoid certain dangers to the existing connection suggested by the line taken by the Irish Parliament on the Regency question. The union between England and Scotland, a century earlier, had been due to motives precisely of the same kind. Then again, there was the difficulty and danger of carrying through the religious emancipation and parliamentary reform demanded by the spirit of the rising age, so long as there existed an Irish Legislature possessing the complete internal sovereignty conceded to the armed claimants of 1782. Thus several converging lines of reasoning and interest led English statesmen to the conclusion that a legislative union was necessary.

The student of the history of French Canada is frequently reminded of that of Ireland. There is a real analogy between the causes of the Legislative Union of Great Britain and Ireland in 1801 and those of the Legislative Union of 1841 between the two

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Canadian provinces. It has been shown that the union of Lower with Upper Canada was made advisable—

- (1) by the necessity of concentration in face of a great adjacent Power and possible enemy ;
- (2) for reasons of finance and commercial unity ;
- (3) because it was deemed impossible at the time in Lower Canada to concede the full principles of English constitutional self-government to a population divided into two parts, numerically very unequal, by race, religion, language, education, distribution of wealth, and modes of occupation, divided also by a long contest for political power, by the ascendancy of the minority, and by the fresh and bitter memory of a recent armed rebellion and violent reprisals.

It was justly thought that, if French Canada were fused by a legislative union with Upper Canada, it would be possible to concede full liberty to the amalgamated colony, and to carry out all desirable reforms without exposing a small but wealthy minority to injustice at the hands of a great majority.

The opposition of country gentlemen and others to the Act of Union was strong in Ireland, even after the rebellion of 1798. For a time it was doubtful whether it could be overcome by all the influence and expenditure in hard cash and titles which the British Government—determined to carry through its high policy—brought to bear upon the owners of seats in the Irish House of Commons. Let us suppose that, as seemed possible in 1799, the Irish Parliament had rejected the Act of Union, and had, some years later, adopted Grattan's alternative national policy of Catholic emanci-

pation and parliamentary reform. It can hardly be doubted that upon ecclesiastical, educational, and agrarian questions the reformed Irish House of Commons would have followed a policy which would have been highly revolutionary, or at any rate seemed to be so to the Irish House of Lords and to public opinion in England. It is certain that the English Government would have refused to permit the administration of Irish affairs by a Cabinet consisting of Ministers representing the majority in the Irish House of Commons, and that the Irish House of Lords would have thrown out most of the more important measures passed by the popular Chamber. That Chamber probably would have retaliated by refusing money supplies, and the deadlock which existed in Lower Canada between 1830 and 1837 would have also existed in Ireland. The same results of an armed insurrection, a suspension, whether legal or illegal, of the Irish constitution, and a legislative union effected by superior power, with the consent of the Irish minority, would in all probability have ensued. So far as one can see, then, a legislative union between Great Britain and Ireland was necessary in order to settle the burning religious, civil, and agrarian questions. It was inscribed upon the books of destiny. Had it not been effected at the beginning, it would have been by the middle, of the nineteenth century.

The Legislative Union has now endured exactly a hundred years. Under it the questions which were formerly in Ireland seeds of revolution and race-hatred have been fairly settled. The richly endowed Church of the Protestant minority (or rather the Church of half that minority) has been disestablished and disendowed with much respect to life interests and

had taken place between England and Scotland. The legislative marriage between England and Scotland had indeed been successful. But then the conditions of success existed. The two countries were not seriously divided by race or language, for the Celtic Highlands were hardly part of the Union till much later. Historical memories were not those of stern and cruel domination on one side and fierce insurrections on the other. They were memories of transactions between two unequal but independent kingdoms, the weaker of which successfully maintained its liberty until the two crowns were united in the person of its king. Above all, there was no deep gulf made by religious doctrine, since England and Scotland were two Protestant countries of different shades. England had before the Union abandoned the attempt to impose her own ecclesiastical system upon Scotland. It was not, as in the case of Ireland, a foreign, but a truly national Church that was guaranteed in Scotland by the treaty of Union. Nor had the English ever confiscated Scottish land for their own use. No agrarian question supplied fuel to national animosity. No sea divided the two countries. The social contrast between Dover and Calais is far greater than any which exists between two continental border towns. On any land border, unless there are very high mountains, the populations on either side shade into each other. Not so when a sea lies between. There is, and always has been, even when England and Scotland were separate realms, far more difference between Northumberland and Kent than between Northumberland and Selkirkshire, but the difference between Kent and Picardy is great. For all these reasons the social and political fusion between England and Scot-

land, though not complete, has been sufficient to justify and render workable, and even useful, a fully incorporating union. Scottish members often act in concert, more or less, with regard to unimportant Scottish affairs; but there has never yet been a Scottish party; Scotland is politically divided upon the same lines as England, Englishmen frequently sit for Scotch and Scotchmen for English seats. Englishmen and Scotchmen are combined in the Executive Governments formed by each of the two great parties. The present accomplished leader of the Conservative party in the House of Commons may be taken as a type of the social, political, and even religious fusion, adequate, if not complete, of the two countries. The Union was not very willingly entered into, nor for long, as Sir Walter Scott shows in his novels, was it warmly acquiesced in by the Scottish people. It was certainly no love match, but it was a reasonable marriage between two nations of sufficient natural affinity. Therefore the working of time, increasing the community of interests, and diminishing friction and jealousies, has removed dislike of the legal union, and it now rests on consent on both sides. It is an union of a real and substantial, although not enthusiastic, kind. No one would desire to change, or even to modify, the nature of the union between England and Scotland, except for the one purpose of accelerating the despatch of business, increasing the wholesome operation of local government, improving the method of legislation, and giving the Imperial Parliament and Government more time for imperial affairs. The ground for suggesting the extension of a degree of national self-government to Scotland is that the laws and circumstances of the two countries are so far different, in consequence of their



whilom independence, that, as it is, a great deal of Scottish business and legislation has to be taken separately.<sup>1</sup> It may fairly be held that, for this reason, it would be convenient to delegate purely Scottish affairs to a Scottish Legislature and provincial Government, in view of the vast increase in the business of the Imperial Parliament and Government.

In the case of Ireland, all the causes which have led to a large degree of social and political fusion between England and Scotland were absent. Mr. Pitt, in 1800, could not, however, have known, *à priori*, whether political and social fusion might not to a great degree be the result of the Union. Till after the first Reform Bill the Irish members in Parliament gave no trouble. This was not wonderful, regard being had to the constituencies by which they were returned. One of Mr. Pitt's opponents in the English Parliament made it, indeed, an objection to the proposed union that Ireland would send across the sea one hundred mere ministerial dependents, so that the English reformers would never flourish again.<sup>2</sup> Until the first Reform Bill this prophecy was partly fulfilled, and it certainly was not till long afterwards that Grattan's contrary prediction that Ireland would send "a hundred rebels" to the British Parliament was largely justified. The distinct Irish Nationalist party

<sup>1</sup> There is, indeed, some additional ground, so long as there continues to be an Established Anglican Church in England, and Presbyterian in Scotland. English Churchmen might justly complain if they were disestablished and disendowed, or reformed in an ultra-Protestant direction, by the help of Scotch votes.

<sup>2</sup> Sir Robert Peel first entered Parliament in the year 1809, as member for Cashel in County Tipperary. His father purchased the seat for the youth, but this Irish representative never even was in Ireland till three years later, when, at the age of twenty-four, he had become Irish Chief Secretary. He then exchanged Cashel for Chippenham in Wiltshire.

coincided in its growth with successive reforms of Parliament and lowerings of the franchise. It hardly appeared above ground until Catholic emancipation had been followed by the Reform Bill of 1832; it was not complete until the Reform of 1884—a revolution in Ireland—had enfranchised the poorer rural classes. Then, for the first time in their history, the Irish people were truly represented, and there appeared at once, vividly and undeniably mirrored in their representation, the natural line of demarcation which exists between them and the English and Scottish nations. At the general election of 1885 Parnell returned from Ireland at the head of eighty-six out of the hundred and five Irish members, all pledged to recover a national Parliament for Ireland, and the majority has since then remained virtually unbroken. This is the result of a political union which has now lasted for exactly one hundred years.

Like the Canadian legislative union of 1841, the union of 1801 succeeded in its immediate object, but has failed to effect the real fusion of the nations which entered into it. One of the best and wisest of the Irish opponents of the Union, Lord Charlemont, predicted this result. He said in his protest: "It would more than any measure contribute to a separation of the two countries." Mr. Lecky, writing seventy years later, thought that this prophecy had been fulfilled. He said: "The measure of Pitt centralised but it did not unite, or, rather, by uniting the legislatures it divided the nations."<sup>1</sup> The reason is that once given by Cardinal Manning with reference to certain proposals for corporate union between the Roman, Greek, and Anglican Churches: "Union is not necessarily

<sup>1</sup> "Leaders of Public Opinion in Ireland," p. 192.

unity. Heterogeneous and repugnant things may be arbitrarily tied together, but this is not unity. Closer contact elicits the repugnances which rend all external bonds in sunder." Or, to quote Master Slender: "I will marry her, sir, at your request, but if there be no great love in the beginning yet Heaven may decrease it upon further acquaintance, when we are married and have more occasion to know one another." But two persons so far dissimilar that they cannot happily keep house together for all purposes may yet very well be partners in a business which concerns them both. Are Great Britain and Ireland in the relation attributed by Lord Carnarvon in 1867 to the French and British Canadas, "so far akin that they can be united, and yet so far dissimilar that they cannot be fused into one body politic?" And, if so, is it possible by decentralisation on federal lines to reconcile the freedom to manage their own affairs, long and steadily demanded by the great majority of the Irish people, with the unity for other purposes of the United Kingdom? The question is worth more consideration than it has yet received.

Mr. Lecky, writing thirty years ago, said: "No Government will ever command the real affection and loyalty of the people which is not in some degree national, administered in a great measure by Irishmen and through Irish institutions," and he added that it should be the aim of every statesman "to give to Ireland the greatest amount of self-government that is compatible with the unity and security of the Empire." The question whether it was possible to give to Ireland as a whole any legislative and executive powers, or collective legal personality, was discussed in 1886 and in 1893. Most Englishmen were then of opinion that

it was impossible to do so. As Englishmen of 1774 could see no real alternative but that of the full supremacy in all matters of the Imperial Parliament, or the complete independence of the Colonies, so, to most Englishmen of 1886, it seemed that there was no real alternative but the existing legislative union for all purposes, or virtual separation between Great Britain and Ireland.

I propose in the following chapter to review the history of the Home Rule controversy.

## CHAPTER II

### THE HOME RULE MOVEMENT

THE nineteenth century was marked all the world over by the struggle between nationality and empire. In some cases one force has won, in some the other; sometimes the struggle has ended in a compromise. The Poles have failed to recover their existence as a nation, but on the other hand the Spanish provinces of America have achieved an existence—a troubled existence—as independent States; Greece, Servia, Roumania, and Bulgaria have broken away from the Ottoman rule; the northern Italians have emancipated themselves from the Austrian Empire, and have been moulded with their southern compatriots into a nation. In the case of Austria and Hungary an attempt has been made, the resultant of conflicting forces, to reconcile national existences with the preservation of an imperial connection. The English have, on the whole, sympathised with the cause of nations against empires. They were themselves engaged during the first years of the century in defending the European nations against the Napoleonic attempt to re-establish the Empire of the West. In this we were following our old tradition of foreign policy, for England had played the same part when Europe was threatened in the sixteenth century by the Spanish, and at the end of the seventeenth by the French power and ambition. Our policy had ever

been to defend the weaker national existences in Europe, while we ourselves built up an Empire in Asia and America.

When Napoleon had been warred down, the governing Tory party in England assisted, or acquiesced, in the European arrangement which restored to a large extent the divisions of territory existing before the French Revolution, without regard to the national feelings and aspirations called to life by that revolution. The rest of the century saw the struggle of national will-to-live against this artificial arrangement; of nature against the design of statesmen. The English Liberals had, up to a certain point, sympathised with the original spirit of the French Revolution; they disliked the arrangements made at Vienna; they sympathised with the Spanish Americans, with the Poles, with the Greeks, the Italians, the Hungarians; it seemed to them a divine law that a people marked out as a distinct nation by race, language, religion, geography, history, and the collective self-consciousness which is the result of all these things, should also possess a free political existence. Englishmen, brought up in this creed and temper, hardly even desired or hoped for a lasting connection between England and the English-speaking Colonies. But they made a distinction between the case of Ireland and that of Poles, Greeks, Italians, or Hungarians. These races were subject to "despotic" Governments or bureaucratic Empires, the Irish were (by statute) an integral part of the freest, most self-governing nation in the world. Therefore Mazzini, Garibaldi, Kossuth were acclaimed, but O'Connell found no sympathy in England; yet the vast and impressive assembly at the Hill of Tara in

1843 was essentially a manifestation of the spirit which inspired the national movements on the Continent.<sup>1</sup> English Liberals had not yet learned that the Irish people had less reason to be satisfied with the Union than had the English. Nor did they then know that if a national sentiment and desire for national self-government exists, it will come into collision as much, or more, with the dominion of a practically alien Parliament as with dominion by an alien autocracy.

Although the Liberal party resisted the earlier Irish national movement, and, for many years, the later movement, their antecedents and education in nationalistic sympathies created a certain pre-disposition in favour of Home Rule. It was less wonderful than it appeared that, when Mr. Gladstone in 1886 suddenly declared his conversion, he should have been able to carry with him more than half of his old party, in spite of the deadly parliamentary warfare which they had waged for some years against the Irish Nationalists. The Liberal party was born in sympathy with the American centrifugal movement of the eighteenth century, reached its height of power and influence about the middle of the nineteenth century, when nationalism was carrying all before it in Europe, and has fought, since then, a losing battle against the rising imperial spirit of the English people. History seems to move in alternate centrifugal and

<sup>1</sup> About 250,000 persons met O'Connell at the Hill of Tara. A resolution was passed in the name of the Irish people for the restoration of the Irish House of Commons. "The Irish people," it said, "have submitted to the Union as being binding in law, but they declare solemnly that it is not founded on right or on constitutional principle, and that it is not obligatory on their conscience." A certain number of Irish gentry joined this movement, or sympathised more or less with it.

centripetal directions, and the word of command is at some times *Solve*, and at others *Coagula*.<sup>1</sup>

The Repeal movement of Daniel O'Connell was virtually crushed by the great Irish famine, and ended with his death in 1847. The modern Home Rule movement dates from a meeting held in Dublin on the 19th May 1870, at which the Home Rule Association was founded. The following resolution was passed at this meeting :—

“That it is the opinion of this meeting that the true remedy for the evils of Ireland is the establishment of an Irish Parliament with full control over our domestic affairs.”

The objects of the new Association were thus defined :—

“1. This Association is formed for the purpose of obtaining for Ireland the right of self-government by means of a National Parliament.

“2. It is hereby declared as the essential principle of this Association that the objects, and the only objects, contemplated by its organisation are :—

“To obtain for our country the right and privilege of managing our own affairs by a Parliament assembled in Ireland, composed of her Majesty the Sovereign and her successors, and the Lords and Commons of Ireland ;

“To secure for that Parliament, *under a federal arrangement*, the right of legislating for and regulating all matters relating to the internal affairs of Ireland, and control over Irish resources and expenditure, subject to the obligation of contributing our just proportion of the imperial expenditure ;

“To leave to an Imperial Parliament the power of dealing with all questions affecting the Imperial

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<sup>1</sup> The inner feelings of parties were curiously revealed in 1877-78 in connection with the Russo-Turkish War.



Crown and Government, legislation regarding the Colonies and other dependencies of the Crown, the relations of the United Empire with foreign States, and all matters appertaining to the defence and stability of the Empire at large ;

“To attain such an adjustment of the relations between the two countries, without any interference with the prerogatives of the Crown, or any disturbance of the principles of the Constitution.

“3. The Association invites the co-operation of all Irishmen who are willing to join in seeking for Ireland a *federal arrangement* based upon these general principles.”

This was the moderate Home Rule programme advocated by Mr. Isaac Butt, and it secured before long the approval of a few Englishmen. Some years later Mr. Chamberlain said, in the House of Commons, that all his “speeches had been in favour of the federal system upon the lines—though not committing myself to the details—of Mr. Butt’s proposal ; and, as everybody knows, Mr. Butt was a strenuous advocate of the full and complete representation of Ireland in the Imperial Parliament.”<sup>1</sup> At the general election of 1874, fifty-nine Irish seats were carried by men pledged to support Home Rule. On June 30th in that year, Mr. Butt moved in the House of Commons a motion, which was opposed by both the English parties, and was defeated by 458 votes to 61. On this occasion the Irish seemed to advocate the unworkable plan that, while having their own Parliament at Dublin, they should intermittently come to London to take part in the Imperial Parliament when imperial affairs were under discussion. Mr. Butt, however,

<sup>1</sup> Speech, 1st June 1886.

subsequently explained his scheme thus in a pamphlet called "Irish Federation":—

"I intend to propose a system under which England, Scotland, and Ireland, united as they are under one sovereign, should have a common Executive, and a common National Council for all purposes necessary to constitute them, to other nations, as a State, while each of them should have its own domestic administration and its own domestic Parliament for its internal affairs. I say 'each of them,' because, although my immediate concern is only with Ireland, I do not suppose that, if Irishmen obtain the separate management of Irish affairs, it is at all likely that Englishmen and Scotchmen would consent to the management of their domestic concerns by a Parliament in which Irish members had a voice."

When, in 1876, Mr. Butt moved for a select committee "to inquire into and report upon the nature, the extent, and the grounds of the demand made by a large proportion of the Irish people for the restoration to Ireland of an Irish Parliament with power to control the internal affairs of that country," he explained himself thus:—

"The proposal was that there should be a Parliament in Ireland, exercising over Irish affairs the same dominant control that had been exercised by the Parliament of Canada over Canadian affairs, and the Parliaments of Australia over Australian affairs, and as was exercised in every colony by colonial Parliaments. It was also proposed that the House of Commons, constituted as now, with an infusion of Irish members, should continue exactly as it did now to administer the affairs of the Empire, everything relating to the Crown, our relations with the Colonies, and all matters connected with imperial

defence. That, he believed, would be a better arrangement for Ireland than existed before the Union, and he for one was not willing to give up his share in the power and government of the Empire."

Sir Michael Hicks-Beach, speaking in this debate, referred to the case of the provinces of Canada as offering the most possible analogy to any self-government which could be conceded to Ireland. He contended that to receive so much self-government as that possessed by one of these provinces would not satisfy the existing Irish claim. In fact, Mr. Butt could not, probably, in Parliament express a claim so moderate as would have satisfied his own desire, by reason of the strong national feeling then rising in Ireland, where politics were quickened by the distress due to the fall of prices.

This moderate federalising movement for a moment looked as if it might have united Irishmen of many shades of opinion. Irish national feeling was diverted into a stormier course by the advent and genius of Charles Stewart Parnell. An Irish squire of English descent, by the time that he was thirty-three years old, and a few years after he had entered into politics, without any training for a public career, with no natural power of oratory, by force of will, courage, faith in his cause, and decision in policy, made himself leader of all sections of Nationalist Ireland. Parnell had in him all the making of a great constructive and conservative statesman, but at this time he was inspired by a passionate hatred of the rule of the English in Ireland, and he wished to have behind him the power of the Irish extremists. Some years later he accepted the principle of federal

union with Great Britain ; but in his earlier speeches, made during the heat of the struggle, especially in those delivered in America, he went as near as possible to taking complete national independence as the final goal of the movement. He held up "Grattan's Parliament" as the very minimum of the Irish claim. "We cannot," he said at Cork in 1885, "ask for less than the restitution of Grattan's Parliament with its important privileges and far-reaching constitution." The complete legislative independence, that is to say, secured in 1782, together with that which did not then exist, a democratic and complete franchise, and a Government responsible to Parliament. It was to demand Grattan's Parliament, and more also. This was the standard used by Parnell to lead the Irish people, but in practice he was willing to take what he could get. He accepted Mr. Gladstone's scheme of 1886, and this fell far short of "Grattan's Parliament."

By the year 1880 the movement directed by Parnell had assumed a revolutionary appearance. The rapid fall in agricultural prices after 1877, and the consequent fight over rents, led to the utmost social disorder and exasperation, and for a few years all chance of any reasonable settlement of the Home Rule question vanished.

As the storm and stress of this social disturbance subsided under the influence of the Land Act, possibilities of a compromise with the Irish claim began to be entertained within the ranks of the Liberal party. Mr. Childers, then Chancellor of the Exchequer to Mr. Gladstone, has left an account of the process by which, even before 1885, he reached the solution of federal union. The congestion of business had made him reflect—

“Whether time for adequately discussing at Westminster the often neglected affairs of the Empire might not be better obtained by relegating to inferior legislative bodies the purely local affairs of each of the three kingdoms, than by artificial restraints on the liberty of debate, always distasteful to Englishmen, which had begun to be suggested in many quarters. . . . These impressions gained more and more power over me, and were strengthened by what I saw during annual visits to the United States and Canada. I had special facilities for watching the action of Congress and the State Legislatures in the former, and of the Dominion Parliament and the Provincial Legislatures in the latter. Again and again I asked myself how it is that our race in the great Republic and in the greatest of our Colonies, requires and fully occupies all this parliamentary machinery (between forty and fifty legislative bodies, most of them with two Chambers each), while we imagine that we can adequately transact the business of England, Scotland, and Ireland, and the imperial affairs of the whole Empire with one Parliament only? I reflected how imperfectly and hurriedly, and often badly, that business was transacted; and, referring especially to Ireland, the question constantly recurred to me whether the experiment of 1801, however needful it may have been at the time, was necessarily wise as a permanent measure; and whether, in fact, the, to my mind, cogent, and, indeed, overwhelming argument of Mr. Pitt against the parliamentary system resulting from Mr. Grattan’s great change twenty years before, could not have been met, or, rather, could not now be met in another way.

“I had, meanwhile, spent some time at Berlin and elsewhere in Germany, and I had special opportunities for studying the relations of the Central Parliament at Berlin with the governments and legis-

latures of the Kingdoms and States which made up the German Empire.”<sup>1</sup>

All this study and that of Irish history and present economic condition, led Mr. Childers, as early as the year 1880, to the conclusion that “in a plan of federal Home Rule lay the salvation of Ireland.” It would have been well if he had stood more firmly by his conviction and not allowed himself to be hurried into supporting Mr. Gladstone’s non-federal measure of 1886.

In the year 1885, Mr. Parnell, at the head of a compact and well-disciplined force of eighty-six Irish members, held the balance between the two British parties. Neither of them was for the moment strong enough to hold office without his support. Just then, before Mr. Gladstone plunged into that rash, ill-advised, and ill-considered venture in which he wrecked the Liberal party, statesmen on both sides were disposed to entertain as a possible step the concession to Ireland of some form of self-government. Lord Carnarvon was that summer the Viceroy of Ireland, the Lord Carnarvon who had, as Colonial Secretary, passed the Canadian Act of 1867.<sup>2</sup> He was undoubtedly disposed to consider whether some reform on the Canadian model might not be possible in the United Kingdom. Lord Randolph Churchill, the leading spirit on the same side in the House of Commons, daring and clear-sighted, was probably inclined to take a similar line. When he justly qualified Mr. Gladstone as “an old man in a hurry,” he meant that a solution by way of concession was indeed to be found, but that the particular method proposed by Mr. Glad-

<sup>1</sup> “Life of Rt. Hon. Hugh Childers,” vol. ii. p. 230.

<sup>2</sup> Lord Carnarvon had also been responsible for the unsuccessful attempt of South African Federation in 1877.

stone was erroneous. Lord Hartington thought that when the basis of municipal and county government had been established in the three kingdoms, it might be possible to proceed further.

Lord Salisbury, in his speech at Newport in October 1885, said :—

“The Irish leader has referred to Austria and Hungary. . . . Some notion of imperial federation was floating in his mind. . . . In speaking of imperial federation, as entirely apart from the Irish question, I wish to guard myself very carefully. I deem it to be one of the questions of the future. . . . But with respect to Ireland, I am bound to say that I have never seen any plan or suggestion which gives me, *at present*, the slightest ground for anticipating that in that direction we shall find any substantial solution of the problem.”

Thus Lord Salisbury admitted that there was a problem to be solved, and that there might be, *in future*, a plan evolved of solving it by a federal method in connection with imperial federation.

But the Unionist statesman whose utterances at this time bear most directly upon my subject is Mr. Chamberlain. During the Liberal Government of 1880 to 1884 Mr. Chamberlain had felt some sympathy, it would appear, with the Irish claim, and, open as he always has been to new ideas, wisely desired to understand, and, so far as possible, meet those of the Irish leader. He was, moreover, opposed in general, consistently with all his principles of political life, to the system of administration of Ireland from England without Irish consent. In June 1885 he made a famous speech at Holloway upon this subject. At this time Mr. Chamberlain was in favour of some kind of Irish

National Council with defined powers, something like the present London County Council, and did not, like Lord Hartington, deem it necessary to wait till municipal foundations had been laid in the three kingdoms. This was before Mr. Gladstone had brought in his Bill of 1886. When this great step had been made Mr. Chamberlain thought that a wider measure than an Irish "National Council" had been rendered necessary. He said in his speech of 9th April 1886 in the House of Commons—and nothing since then has happened which can diminish the force and truth of his words :—

"After the fact that a most important proportion of one of the great parties in the State has been willing, at all events, to entertain the proposal of the right honourable gentleman (Mr. Gladstone), it is *only a very large proposal which can at any future time be accepted as a solution of this vast question. I should look for the solution in the direction of the principle of federation.* My right honourable friend has looked for his model to the relations between this country and her self-governing and practically independent Colonies. I think that is of doubtful expediency. The present connection between our Colonies and ourselves is no doubt very strong, owing to the affection which exists between members of the same nation. But it is a sentimental tie, and a sentimental tie only. . . . It appears to me that the advantage of a system of federation is that Ireland might under it really remain an integral part of the Empire. The action of such a scheme is centripetal and not centrifugal, and it is in the direction of federation that the democratic movement has made most advances in the present century."

Mr. Chamberlain then referred to the examples of the German Empire and of the United States, and of the last he said :—



“ Ah, sir, there you have the greatest Democracy that the world has ever seen, and a Democracy which has known how to fight in order to maintain its union. It has fought for and triumphantly maintained the imperial union of the United States, but it has known also how to respect local differences.”

He added—

“ I say that, in my view, the solution of this question should be sought in some form of federation which should really maintain the imperial unity, and which would at the same time conciliate the desire for a national local government which is felt so strongly by the constituents of Irish members opposite.”

Mr. Chamberlain evidently did not, like Lord Salisbury in 1885, think it necessary to await the evolution of some scheme for the federation of the whole Empire.

In the same speech, he expressed his opinion that Mr. Gladstone, instead of rushing headlong into his impossible proposals, should have constituted a Commission consisting of the leading men of all parties in order to work out, if possible, a solution of the question. Had this wise advice been adopted in 1886, and the conjuncture was very suitable for such a step, one can hardly doubt that through the exhaustion of all other alternatives the federalisation of the United Kingdom upon the Canadian model would have been found to be the only solution, if any change were to be made.

When Mr. Chamberlain spoke in the debate on the second reading of the Bill of 1886, he worked out his idea more fully.<sup>1</sup> He suggested again, as an alternative Home Rule policy, “ *the present constitution of Canada*—not, however, in the relations between Canada and this country” (to which Mr. Gladstone

<sup>1</sup> See “Hansard” for 1st June 1886.

and others had referred)—“those are the wrong lines, and lines against which I protest, and which mean separation—but in the relations *inter se* of the provinces of Canada and the Dominion Parliament. Those are the relations which I, for one, am perfectly prepared to establish to-morrow between this country and Ireland.”<sup>1</sup>

Mr. Chamberlain went on to give the following admirably concise definition of the provincial limitations in Canada :—

“In the Dominion Parliament there is complete and continuous representation of every part of the Dominion. They (the provinces) are represented proportionally according to their numbers; they are represented continuously and fully. In the next place, there is absolute and effective supremacy of the Dominion Parliament over the Provincial Legislatures. There is a veto which can be, and is, used; there is a right of concurrent legislation which can be, and is, used; and the Provincial Parliaments are subordinate bodies with distinctly defined rights of legislation expressly given to them by statute. Those are great differences, but there is another difference, one of detail, but not of small importance—the legislation as to criminal law and procedure. Where does it rest in Canada? Not with the local Assemblies, but with the Dominion Parliament. And the Judges of the land—by whom are they appointed, and to whom are they responsible? They are appointed by the Governor-General, and paid by the Dominion Parliament. In

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<sup>1</sup> Mr. Chamberlain has not gone further than to say that he would be willing to place “this country,” meaning Great Britain and Ireland, upon the relations *inter se* of two Canadian provinces. But I think that if this were contemplated, it would be found to be desirable, either at the same time, or soon after, to make Scotland a distinct province, and perhaps to make Wales one also.

that way the Judges are independent, and are not likely to be affected by local influences which might prevail in smaller and subordinate bodies."

At the end of these discussions, therefore, Mr. Chamberlain held the position that Ireland might be entrusted with the same degree of autonomy as that possessed by a Canadian province, though less than that enjoyed by an American State. In his speech against the second reading of the Home Rule Bill of 1893, Mr. Chamberlain did not, it is true, again raise the alternative policy of federalisation, but he said nothing which would prevent him from adopting it in future circumstances. He said that the onus of proving the merits of the policy contained in the Bill of 1893 lay upon its advocates, and that its opponents were not bound to suggest any alternative policy. His speech, unlike those of many Unionists, was studiously moderate in tone, and chiefly consisted of the argument that more time and patience were necessary in order to see whether the removal of their chief grievances would not make the Irish gradually cease to desire Home Rule.

Mr. Gladstone, in his Home Rule Bill of 1886, proposed to exclude Irish representatives altogether from the British Parliament, giving to them their own Parliament in Dublin. Ireland would thus have been placed in the position of a self-governing colony, with some very important differences. The most important of these was the restriction of the Irish Parliament from levying Customs or Excise duties. These duties were to be imposed by the Imperial Parliament, and levied by imperial officers, and out of them was to be taken a very large contribution by Ireland towards

imperial purposes.<sup>1</sup> The objection was, of course, made in the debates that under the new arrangement the Customs and Excise duties could be altered without the consent of the Irish representatives, and that thus there would be a violation of the primary principle that representation should accompany taxation. Mr. Gladstone said that, if the House of Commons desired it, the Government would, in Committee, insert a provision "that, when a proposal is made to alter the taxation in respect of Customs and Excise, Irish members shall have an opportunity of appearing in this House to take a share in the transaction of that business."<sup>2</sup> Even if the Bill had received this amendment, it would have been open to the objection that although Ireland (unlike any colony) was to pay a large compulsory annual sum to imperial expenditure, she would have had no voice whatever in the application of that money. The doctrine that "representation should accompany taxation" means that the assent of representatives of the taxpayer should be given not only to the levying, but to the application of the revenue raised. The chief struggles in English constitutional history were for the vindication of this principle.<sup>3</sup>

<sup>1</sup> The original draft of the Bill left Customs and Excise to the Irish Parliament, and apparently this great change was hastily made at the last moment in order to induce Mr. Childers, whose attitude in the circumstances was critical, to continue to support Mr. Gladstone. (See "Life of Rt. Hon. Hugh Childers," vol. ii. p. 249)

<sup>2</sup> See Mr. Gladstone's Speech of 10th May 1886.

<sup>3</sup> Mr. Gladstone, it is true, threw out in the course of the second reading some vague and mysterious intimations that if the House would allow the Bill to go to Committee, alterations might be introduced enabling Irish representatives to attend the Imperial Parliament for other purposes besides alterations of Customs and Excise duties. It is quite possible that if the Bill had reached Committee, this great political strategist might have developed it into something like the Bill of 1893 (with its retention of Irish members) in order to secure more Radical support. But then it would also have had the special absurdity of the Bill of 1893.

The Bill of 1886 excluded also from the cognisance of the Irish legislature all questions relating to copyright, currency, coining, trade and navigation, so that in all these most important matters the Irish people would have been subject to the legislation of an external Parliament in which they had no voice. Nor, although they contributed so large a sum of money, would they have had any voice in Indian, colonial, foreign, naval, or military affairs. Mr. Chamberlain, in his speech upon the introduction of the Bill, said, very justly :—

“It is quite unreasonable to turn out the Irish members and leave them entirely unrepresented in matters in which Irish interests are largely concerned, and which are dealt with by the Imperial Parliament. Just consider it. Already, under the scheme of the Prime Minister, the Customs and Excise are to be taken from their control ; all the prerogatives of the Crown are to be removed from their competence to deal with, as are also the Army and Navy, and foreign and colonial policy. Are the Irish members of opinion that the Irish people would be permanently content to be shut out from all part in the imperial policy of this country ?”<sup>1</sup>

If the Bill of 1886 had been passed, it would, no doubt, have been followed by a long struggle on the part of the Irish Legislature either to obtain a larger share of autonomy, especially with regard to trade and navigation, or to pay less tribute, or to achieve both these objects. Thus there was about the measure no hope of that kind of duration which men call “finality.” It would, moreover, have led, very probably, to a civil war in Ireland, where a strong and

<sup>1</sup> “Hansard,” 9th April 1886.

determined minority were absolutely hostile, with the best reason, to the proposal that they should be entirely cut off both from English protection and from all share in the general councils of the United Kingdom. It seemed to many in England, and to myself among them, that if ever civil war was legitimate it would be legitimate in such a case as this. It was a strange proposal, and one revealing its author's ignorance of one side of human nature, that men should be deprived, against their will, of their voice in the Council of the United Kingdom, and yet should continue to make compulsory contribution towards its expenditure.

The second Bill, that of 1893, as it stood when submitted to the House of Lords after it had been forced through the House of Commons, provided that, while there should be a separate Parliament and Executive for the management of Irish affairs,<sup>1</sup> Irish members should, as before, sit for all purposes in the Imperial Parliament. This plan avoided some of the chief objections to the Bill of 1886, but it involved the inequality that Irish representatives would have had the power of interfering in all the domestic affairs of England and Scotland, while British representatives would have had no power of interfering in those of Ireland. British representatives would have had no control over the Irish Executive, while Irish representatives would have continued to take their share in appointing and overthrowing British Governments. The result would probably have been that the Irish would have used these powers with the object of

<sup>1</sup> The Bill excluded the Irish Parliament from the departments of Customs and Excise, external trade and navigation, volunteers and militia, treason and treason felony, and placed them under various restrictions as to religious endowments and education.

unduly extending the sphere of the Irish Parliament.

In Canada, the Provincial Legislatures and Executives are restricted to those powers which are expressly allocated to them by the Constitutional Act, and all other powers are retained by the Dominion. The Bills of 1886 and 1893 both followed the reverse principle, that adopted by the United States (and recently by the Australians), and left to the Irish Legislature all powers from which it was not expressly precluded. Mr. Chamberlain took this as one of his objections to the Bill of 1886. "The new authority," he said, "was to be made supreme in all matters which were not expressly excluded from its competence, whereas I thought the right principle in any such proposal would be to confer upon it authority only in those cases in which the authority was specially and by statute delegated."<sup>1</sup>

The schemes of 1886 and 1893 were alike impracticable, and the latter would never have passed through the House of Commons had not every one who supported it known for certain that it would be rejected by the House of Lords *in toto*, and would then be dropped.

The debates of 1886 and 1893 were nevertheless of service in clearing the air, and limiting the issues. They made it clear that there are but three possible modes of action. The first is to make no large change at all. The second is to place Ireland altogether on the footing of a self-governing colony. The third way is to follow the Canadian method of 1867 and to decentralise the United Kingdom upon federal lines, retaining the unity, yet giving a real constitutional

<sup>1</sup> "Hansard," Speech of 9th April 1886.

personality to the several component kingdoms. This third way is a *via media* between the first and the second.

What of the second suggestion, namely, that Ireland should be placed upon the footing of a colony like New Zealand? Can we contemplate an Ireland neither represented in nor taxed by the Imperial Parliament, free to adopt protection against English goods, assisting the Mother Country with men and money in war according to free-will but not of necessity, subject in all matters relating to internal legislation to no other check than that of a veto by the Viceroy or the British Cabinet—a check not easily to be exercised in practice—and to the ultimate ratio of armed interference? Hardly. It is, moreover, a question whether in the case of a self-governing colony the political connection with the Mother Country rests ultimately upon anything else than free choice and affection. When Lord Hartington spoke upon the first reading of the Home Rule Bill of 1886 he dwelt much upon the voluntary nature of the tie between Great Britain and the self-governing Colonies, in order to show the danger of conceding to a people so naturally rebellious, he thought, as the Irish, anything like colonial autonomy. He said:—

“We know that if any one of these Colonies were to express a strong, a real, and a determined desire to separate itself for ever from the nominal connection which now binds it to this country, there is no Parliament, no statesman, who would attempt, at this time of day, to oppose that consummation by force.”

If this is true, it shows the greatness of the difference between a British colony and a State in the



American Union. The former is like a son living in his father's house, and free to quit it; the latter like an inseparable part of a living organism. How far the doctrine is in fact true seems doubtful. One can easily imagine Great Britain, with the approval of other Colonies, refusing to concede independence to a colony when the wish of the local majority for separation was opposed by a minority strong in numbers, or education, or wealth, or more closely connected than the majority with Anglo-Saxon blood. Suppose, for instance, that in Canada some day a large majority composed of French and Irish Canadians, or of German and American immigrants, should demand separation from the Empire, and that this demand were hotly opposed by a minority consisting of Canadians of English and Scottish origin, is it clear that, even after the demand had been made for many successive years, the Imperial Parliament and Government would grant it? And if the Canadian majority, in despair, resorted to arms, would not the forces of the Empire be brought to the support of the loyalist minority?<sup>1</sup> It may, however, be conceded that, if the population of a colony were virtually unanimous in their demand for complete national independence, and if their demand was incessant and continuous over a long space of time, it would, as ideas now stand, be difficult to refuse it. *As ideas now stand*, for ideas may be gradually, or even swiftly, changing to an order which will make it almost as difficult for even an unanimous New Zealand to separate itself from the Empire as for an unanimous

<sup>1</sup> It is worth noting that Sir Robert Peel, in his speech of 16th January 1838, on the Canadian question, challenged the doctrine that if the majority of people in a colony desire separation they should therefore be released from allegiance.

Virginia to separate from the United States. And the chances certainly are that Ireland never would be unanimous, and that there never would be wanting in that island a strong minority averse to the severing of remaining links with the Crown and the Empire. But even if the danger of complete separation by a colonial Ireland be not great, we cannot afford to risk it. There is all the difference in the world between complete separation in the case of a country like New Zealand, on the other side of the planet, and one like Ireland, two or three hours' steam from the English coast, and not much more from the French.

The preamble to the Bill of 1893 stated that the establishment of the Irish Legislature was not to impair the supremacy of the Imperial Parliament, and the legal advocates of the measure explained that this superior legislative authority would apply to all affairs in Ireland. Their opponents pointed out that in all probability this supremacy would in practice be nominal. The Duke of Devonshire, in his speech of 5th September 1893 in the House of Lords, in the final debate on the Bill, attacked with crushing force and lucidity the unfortunate hybrid measure, hesitating between conceding to Ireland full colonial independence or keeping her an integral part of the United Kingdom. His words are well worth quoting at length. He said that—

“The supporters of the Bill seem to recognise no distinction between the expressions, ‘unity of the United Kingdom’ and ‘unity of the Empire.’ In the United Kingdom Parliament is supreme not only in its legislative but in its executive functions. Parliament makes and unmakes our Ministries; it revises

their actions. Ministries may make peace and war, but they do so at pain of instant dismissal by Parliament from office, and in affairs of internal administration the power of Parliament is equally direct. It can dismiss a Ministry if it is too extravagant or too economical; it can dismiss a Ministry because its government is too stringent or too lax. It does actually and practically in every way directly govern England, Scotland, and Ireland. . . . That is the nature of the government and the supremacy of Parliament in the United Kingdom; it is the direct government of these islands by Parliament through a Committee.<sup>1</sup> As for the British Empire, it is entirely different. Over the whole of the British Empire, including our self-governing Colonies, Parliament remains nominally and constitutionally supreme. So long as a colony desires to retain its connection with Great Britain, it has to be content to have no foreign policy; it has to share our risks in that respect, while it receives the advantages of our protection. As regards the internal affairs of our self-governing Colonies, the supremacy of Parliament, and the direct control of Parliament has become nothing but a name. Parliament has no doubt a constitutional right to make laws for a colony, to repeal or veto colonial Acts, to direct the Governor to impose a certain policy on his Ministers, to dismiss a Ministry or summon others, and to exercise every other right of sovereignty, but this power is only nominal; and no British Government would propose—no Parliament would support

<sup>1</sup> Subject always to an appeal to the electorate. One could perhaps more fully describe our government as the government of these islands by the electorate acting through the House of Commons, which again acts through a Committee of Parliament. This government is in practice modified by the unseen influence of the Crown upon this Committee, an influence which may be greater at one time and less at another. There can be no doubt that the electorate is the finally deciding authority. But is the Cabinet the servant, in practice, or the master of the House of Commons? It is a delicate question, which may be left to experts.

Government in proposing—to exercise any real control over the Acts of internal government on the part of a colonial Parliament. Which of the two systems is the system at which we are aiming in this policy?”

The measure was, in fact, an attempt to satisfy at once the Irish Nationalists and the large section of Englishmen and Scotchmen who would have accepted the principle of Irish self-government, could they have been convinced that it would not seriously endanger either the safety of the Empire or that of the minority in Ireland. Mr. Gladstone's proposals offered to the Irish wide, vague, and indefinite powers, and reserved to the Imperial Parliament an equally vague and indefinite over-ruling control. It is difficult to imagine any measure, except the Home Rule Bill of 1886, more pregnant with future difficulties and quarrels than was the Home Rule Bill of 1893.

It is conceivable, though unlikely, that Great Britain and all the self-governing Colonies may some day be united in a complete political federation, under a single Imperial Government and with a central federal Legislature dealing with all questions of foreign, military, naval, and commercial policy. Some have thought that this solution of the larger question may contain the solution of the far smaller question relating to the United Kingdom; and that, when imperial federation comes to pass, Great Britain and Ireland may safely enter into it, not as one State, but as two States, equal in right though unequal in power and greatness. The Irish are sometimes exhorted to postpone until this great day their particular desire for a measure of national autonomy.

To this it may be answered, firstly, that the day of such a formal federation of the Empire may never

sentative "Council of Agriculture." This Council consists of—

(a) Two persons to be appointed by the County Council of each county (exclusive of county boroughs) in each of the four Irish provinces; and

(b) A number of persons resident in each province equal to the number of counties in the province, to be appointed by the Agricultural Department with due regard to the representation on the Council of any agricultural or industrial organisations in the province. The members representing each province are to constitute separate committees on the Council, to be styled the Provincial Committees of the respective provinces. A separate Council, partly representative of urban districts, and partly nominated, supports the industrial side of the Department.

The Agricultural Department has at its disposal a certain annual sum of money. Portions of this sum are appropriated by the Act to definite purposes, and the surplus is to be applied, "subject as regards any particular application to the concurrence of the Agricultural Board" . . . "for the purposes of agriculture and other rural industries or sea fisheries." A wide definition in detail of these purposes is given by section 30 of the Act.

This measure was thus described while it was before Parliament by a competent observer :—

"It introduces a completely new departure into Irish administration, a machinery of government for developing the agricultural and industrial resources of the country. This machinery is so constructed, after careful study, as to possess all the advantages of the most approved State Departments of the kind on the Continent, and to remove from Ireland at last the

heaviest handicap under which she has laboured in the struggle with her foreign competitors. The Bill introduces the representative principle into economic administration; it creates elective councils of the classes whom its work concerns, to whom the Department must come for advice, and elective boards who are given the power of the purse. It brings over and places under Irish authority all the powers now exercised in Ireland by the Science and Art Department of South Kensington. It provides for the establishment in Ireland of a comprehensive system of technical instruction, and for the endowment of scientific research as applied to agriculture and industry. It provides the State under the direction of our people with the means of stimulating our agricultural and industrial production in every form, and defending and pushing our products in the markets of the world. It entitles the Government to take up the grievances of traders and farmers against the railway companies, and appear on their behalf before the Railway Commission. It gives power to the Department in connection with the County Councils to undertake schemes for re-forestation of the country, for reclaiming its waste lands, for developing its inland fisheries, for laying down its disused waterbeds. It is in many respects a supplement to the County Councils Act, and just the measure needed to give these new bodies substance instead of shadow to work on."

It is important to observe that the Act empowers the Government to transfer, by Order in Council, to the new Department any suitable administrative powers held by any other Government Department in Ireland.

Obviously this is a large and valuable measure, and the new institutions are capable of considerable

developments. The framers of the Act took for their model the Industrial and Agricultural Boards, Departments, and representative Councils, which are to be found in some Continental countries, notably in Belgium, and Ireland will perhaps in turn serve as a model in these matters for England and Scotland.

The new Agricultural Department is eminently adapted to a country like Ireland. The whole history and character of Ireland has made a strong central initiative and guidance absolutely necessary to the economic welfare of the island. Ireland has suffered from nothing more than from the application to her wholly dissimilar circumstances of the *laissez faire* principles which, arising out of the conditions of England in the earlier part of the nineteenth century, were adopted as a gospel with ardent and indiscriminating faith, a gospel now less warmly believed in, even in the home of its birth. Can it be doubted that if Ireland had during this century enjoyed the measure of State independence possessed by Bavaria or Wurtemberg, her Parliament would long ago have departed from the English and adopted the Continental economic policy, inspired, as an Irish Parliament must have been, by the instincts and needs of the Irish people?<sup>1</sup> The long-delayed step has been taken at last, and it is excellent. But the institution of an Agricultural and Technical Education Department, assisted by Boards and Councils half nominated by Government, half elected by a process of secondary election, dealing with a special class of subjects, by means of a fixed grant of money, will not satisfy the desire of the Irish

<sup>1</sup> A very striking account is given in the Irish Recess Committee Report of 1896 of the steps by which the State of Wurtemberg raised itself from being one of the poorest into being one of the most prosperous in the German Empire.

people for collective political life and action. The Act consolidates some scattered fragments of administration in Ireland, transfers certain administrative functions from London to Ireland, and gives to elected persons some control over certain important branches of administration; it builds up machinery which will be of the greatest service to any future Irish Government and Parliament, and it will, in the meantime, be highly advantageous to Irish agriculture and industry. The measure is in every way for the good of Ireland, and, together with the Land Purchase Acts, is in accordance with the best traditions of the Conservative party who passed it. But since the desire for Home Rule is based, at bottom, not on utilitarian grounds, but on the natural and legitimate "*will-to-live*" of the Irish people, there is no reason to suppose, nor did the authors of these measures suppose, that the creation of either County Councils or secondary bodies for special purposes partly based upon County Councils, or any new Boards or Departments, will turn a single vote away from the cause of national freedom. Let us suppose that the tables were reversed, and that England was continually ruled from Dublin by a Government continually Irish, which could not stand for a day if it depended upon English electors, and by a Legislature in which the Irish had a permanent large majority—is there a conceivable Englishman whose desire for an English Parliament for English affairs would be satisfied by the creation of County Councils and Agricultural Departments upon a scale however liberal and generous? Surely not.

One can, it is true, conceive the outgrowth of the new institutions finally taking the form of complete Home Rule. By one measure the new Councils might



be consolidated and rendered entirely elective. By another the election of their members might be transferred to the ordinary electorate. By a third they might be given some powers of direct taxation. By others their powers might be extended to the whole of education, poor law, railways, all branches of local government. Finally, the whole Executive Government of Ireland might become responsible to the virtual Parliament. In indirect ways powerful assemblies have grown up through centuries of conflict and trouble. But Europeans are no longer children. The world has reached the age in which works of reason have taken the place of processes of almost unconscious growth. The constitutions of the most advanced and successful countries, of Germany, Canada, Australia, the United States, indeed of almost every civilised country, are now based upon specific written documents. If we contemplate the eventual transfer of Irish affairs to Irish control, it would seem to be in accordance with the best modern precedents both within and without the British Empire, that it should be done by a deliberate and reasoned act, with the end consciously in view, and the means rationally adjusted to it.

Meanwhile, the County Councils have their use. They will train the Irish people in the practical conduct of affairs, even if it be by the costly teaching of errors, and will educate men for future national business. The new central Councils, since they are partly nominated from above, even more than the County Councils (from which most Irish Unionists are at present excluded by the application of the Home Rule test), should also do the service of bringing together for the transaction of useful business men of different political and religious opinions, and inhabiting different parts of Ireland.

There is no political education so effective as when men transact together business, of a not office-contesting kind, with a view to increasing the welfare of a common country. Irishmen will learn to know, and cease so bitterly to misjudge, each other; the internal divisions due to a disastrous history will be greatly healed, and in a few years from now the country will be far better prepared to rule itself.

If, on the one hand, it is not consistent with the interests of the United Kingdom to break up its unity so far as to place Ireland upon the footing of a colony like New Zealand, and if, on the other, no mere development of County Councils solves the difficulty, it is worth while for reasonable men to consider whether the Canadian precedent does not best meet the necessities or possibilities of the case. The suggestion is that the Supreme Government and Parliament of the whole United Kingdom should continue to exist, but should delegate the provincial, or sub-national, part of their respective work; that Legislative Assemblies for England, Scotland, Ireland, and perhaps Wales, should be created; that the necessary financial readjustments should be made; and that specifically English, Scottish, Irish, and perhaps Welsh business, now transacted in the existing Parliament, should be transferred to these minor Legislatures.<sup>1</sup>

Every one must wish to bring to an end the war of nations fought in rather squalid fashion across the floor of the House of Commons. Every one must desire to satisfy, if and so far as it can be done without injury to wider interests, the strong and enduring Irish

<sup>1</sup> A constitutional development of this kind would no doubt include a reform of the House of Lords, now admitted by most people to be expedient.

national sentiment, and to see it turned into useful modes of action. Every one, also, who cares that work should be done well and in a business-like way, must feel that there is an excessive concentration of business in a single Parliament and Executive Government. The thing can be done in France, because France is a single and homogeneous country, and because it has a much stronger and more pervading bureaucracy. But the result of British history is that three States, distinct in fact and by nature, continue to exist under one Parliament. The difficulty was well expressed by Mr. Gladstone so long ago as 1866.<sup>1</sup> He said :—

“We are an united people with a common government, and a complete political incorporation. But we are also an United Kingdom made up of three nations, of three countries welded politically into one, but necessarily and in fact with many distinctions of law, of usage, of character, of history, and of religion. In circumstances such as these there are common questions which must be administered upon principles common to the whole Empire, all those questions in which the interests of the whole overbear and swallow up the interests of the part. . . . But there are many other questions in regard to which, in England, in Scotland, in Ireland, that which is English, Scotch, or Irish respectively predominates over that which is common.”

This is an obvious truth, rather rhetorically expressed. Any one can satisfy himself of it by looking through a few volumes of “Hansard” or the Statutes. But, for form’s sake, we may cite one or two witnesses in support of Mr. Gladstone. Let them be Scotchmen, and therefore of unquestioned veracity.

Sir David Wedderburn moved, in 1872, for a com-

<sup>1</sup> 3 “Hansard,” vol. clxxxi. p. 27.

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mittee to inquire into the best means of "promoting the despatch of Scotch parliamentary business." said :—

"In the case of Scotland we have a distinct system of laws, and customs, and traditions, and it appears to me that if these laws and customs are to be remodelled as to suit the growing wants of the community, it will best be done by the people themselves through their representatives, with as little interference as possible on the part of those who are not familiar with particular laws, customs, and institutions."<sup>1</sup>

And, after remarking that "to legislate for a country of three millions of people involves nearly as many difficulties as to legislate for thirty millions," he went on to say :—

"The problem before us is that we have to legislate separately for an independent province in the Imperial Assembly, and the solution of the problem as at present worked out, is that it is impossible to obtain from this Imperial Assembly time to discuss details which are unfamiliar to the great bulk of the Assembly, in which they feel no direct interest, and for which they have no direct responsibility."

Mr. Gladstone—it was fourteen years before the Home Rule Bill—replied that "the mind of the House was not yet, he feared, ripe for any vigorous and comprehensive effort for the solution of these difficulties."

In 1887, Lord Lothian, moving a Bill transferring further power to the recently created Secretary of State for Scotland, said—and his argument is as valid in favour of the creation of a distinct Scottish Legislature as of a distinct Scottish Executive :—

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<sup>1</sup> "Hansard," vol. ccix. c. 1853.

“After the long period of intimate union between England and Scotland, which has lasted now nearly two hundred years, people are apt to forget how entirely distinctive and different the administration of Scotland is from that of England. There is almost no point of resemblance. There are different forms of religion, and different social forms affecting almost every portion of Scotland. There is a different code of education—an entirely different code of education—and different systems of agriculture. There are also different systems affecting the law of lunacy and parochial laws, and almost every other department.”<sup>1</sup>

The result, so far, of the Scottish need for more self-government is that the Scottish Executive Government, which had since 1745 been merged altogether in that of England, was, by the Acts of 1885 and 1887 (48 & 49 Vic. c. 6, and 50 & 51 Vic. c. 52), made distinct once more by the creation of a Scottish Secretary of State, with a Department, and the transfer to him of all purely Scottish administration. Scotland is now, therefore, on the same footing in this respect as Ireland. Both countries have an Executive, distinct, but depending on and responsible to a Parliament, in which the English, with a population six times as large as either, have a vast preponderance of power and influence.

In Ireland there is a whole body of land law dissimilar to that in England and Scotland, the education system is different, there is no Established Church, the police system is on a different basis, there is a body of peculiar criminal law which can be called into force for any district by a stroke of the Lord Lieutenant's pen. The different social structure

<sup>1</sup> “Hansard,” vol. cccxviii. p. 687.

in each of the three kingdoms makes separate legislation necessary. For instance, County Councils had to be established in each kingdom by a separate Act, each Act distinct in many of its details, and each consuming a great deal of the time of Parliament. Poor law and educational legislation has always been carried through in this threefold manner. In a hundred ways it has been found to be impossible to legislate for three distinct countries as if they were one country. One Parliament has to do the work which, before the union of Great Britain and Ireland, was done by two Parliaments, and before the union of England and Scotland was done by three. The social complexity and legislative sphere has been enormously increased since these unions, and Indian and Colonial work has been added. Parliament has, during this century, carried on the work of legislating (1) for England, (2) for Scotland, (3) for Ireland, (4) in some cases for Wales, (5) for the United Kingdom, (6) in some cases for India and the Colonies, doing, as it were, the work which might be distributed among at least four Assemblies. And not only legislation, but debating apart from legislation roams through all these spheres. An analysis of the questions asked any afternoon in the House of Commons would show their absurdly wide range—from the grievance of an old woman in a workhouse in County Galway to the designs of Russia in the Far East.

All this side of the subject has been admirably worked out by Mr. T. A. Spalding in his book called "Federation and Empire," published in 1896. He has taken the trouble to analyse the Acts of Parliament from 1801 to 1890, and gives, among others, the following very useful table of results by percentages :—

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Date	Federal, i.e. for United Kingdom	STATES							States Total
		England & Scotland	England & Ireland	England	Scotland	Ireland	Isle of Man	Colonies	
1801-10	19.6	31.0	.4	17.4	3.7	24.1	.4	3.4	80.4
1811-20	26.8	23.5	.8	20.1	3.4	21.3	.1	4.0	73.2
1821-30	35.0	7.2	1.4	25.5	6.4	20.1	.3	4.1	65.0
1831-40	33.4	3.5	1.4	32.7	6.4	17.3	.3	5.0	66.6
1841-50	31.9	3.5	3.7	30.9	4.7	20.4	.2	4.7	68.1
1851-60	30.0	3.3	2.3	37.0	8.0	14.6	—	4.8	70.0
1861-70	32.2	3.7	2.5	31.8	8.9	14.6	.7	5.6	67.8
1871-80	30.1	1.4	2.4	36.4	8.6	16.7	.4	4.0	69.9
1881-90	23.7	.8	2.9	47.0	7.6	15.0	.5	2.5	76.3

These are "general public Acts" not including "private Acts."

The result of driving the business of four or five Parliaments through one Parliament is that this Assembly, even with the aid of all its newly acquired powers of abridging discussion of measures and criticism of Ministers, is unable to do its work efficiently. It is not so much that the work which is done is badly done as that work which might have been done is not done. This becomes a serious danger as international competition increases, and the United Kingdom is pressed in the world rivalry by the new great rising nations.

Suppose, for an instance, that twenty years ago there had been an energetic reforming Minister at the War Office, apprehensive that we were defending a vast Empire with an inadequate force, and anxious to effect a great change. He would have found his path 'blocked year after year by measures appealing more directly to the hearts or pockets of members and their constituents. Irish land bills, English education, Scottish liquor laws, factory legislation, poor law, local questions of every kind would have stood in the way of vital imperial legislation. He

might deem himself lucky if, by making himself troublesome to his colleagues, he got through some patchwork measure cut down to a tenth part of his original scheme before his term of office came to an end. Under the present system either imperial matters, or the affairs of the United Kingdom, or those of England, Scotland, or Ireland are neglected, or, as the workmen say, scamped. All of them suffer from this dangerous over-centralisation of business.

Not only is work ill done or not done, but the malady is provoking a remedy full of dangers of its own—the transfer of all real financial and legislative power from the House of Commons to the Cabinet. In March 1901 a Tory member, Lord Hugh Cecil, used in the sacred precincts language hardly heard since the days of Charles I. “We hear often,” he said, “of the infringements of the rights of private members, and it cannot be denied that a transfer of political power from the House of Commons to the Cabinet is going on. . . . Why is it that nobody cares, outside these walls, about the rights of private members? Because there is a deep-seated feeling that the House is an institution which has ceased to have much authority or much repute, and that when a better institution, represented by the Cabinet, encroaches upon the rights of a worse one, it is a matter of small concern to the country.”

The theoretical and practical deduction from this doctrine is that the House of Commons is to become a mere body for registering the decrees of a secret committee largely consisting of men in the House of Lords who never come near it. How long in that case will the House of Commons continue to attract the services of able men? It is felt already that for a man

who desires not so much honorary distinction as real and practical work, the London County Council offers satisfactions which Parliament is powerless to bestow. Yet it is an Assembly with a great history. It would be a pity that so noble a flood should end in shallows and miseries. A strange ending, indeed, if the House which has furnished a career to Burke, and Pitt, and Gladstone should become an assembly of courtiers of power, proud of a servitude ennobled by the distinction of hearing the official discourses of under-secretaries, and adorned by the pleasure of entertaining ladies at tea on the Terrace on fine summer evenings.

The historian who chronicled the decline and fall of the House of Commons might draw the moral that this Assembly, by grasping at too much power, had lost power; that it had swallowed more business than it could digest; and that the proved incapacity of a large and miscellaneous body to control at once the distinct affairs of England, Ireland, Scotland, the United Kingdom, and the Empire, had made the country witness without dissatisfaction the gradual transfer of all substantial authority to the King's Executive Council.

If in the United Kingdom we are sensible of a certain political malady, and compare our constitution with that of other countries, we find that the federal system in various forms prevails in the most flourishing and advancing States of the present and the future. The United States of America are so constituted, and so is the German Empire, and Canada, and now Australia. The rise and advance in every direction of the German Empire has been the most striking phenomenon of the second half of the nineteenth century. This Empire is far less centralised

than is the United Kingdom, and life, strong at the heart, is strong also in every member. There is no dull monotony of system; the German Empire, though ballasted by the great kingdom of Prussia, much larger than any other, includes every kind of minor State flying its own flag beneath the imperial eagles; small republics like Hamburg or Bremen, good sized constitutional monarchies like Bavaria or Saxony.<sup>1</sup> If the Dutch liked to enter the Empire, the kingdom of Holland could come in without any change in its domestic constitution. There are States dominantly Protestant and States dominantly Catholic; industrial States and agricultural; each with its own government and varying constitution, and each stimulated by a beneficial rivalry in good works with its neighbours. Every State has the power itself to make itself healthy, prosperous, and beautiful. In cities like Munich or Dresden the traveller feels that mysterious something, wider and higher and nobler than the life even of a large and wealthy provincial town, which marks the existence of a real State capital, the heart of a country living a life of its own. His thoughts may turn with melancholy to those fine old streets and squares and public buildings which in Dublin are now but memorials of a political life which did, though imperfect, exist.

Mr. Matthew Arnold once gave his impression of the advantages derived by the American people from their constitution, whatever its faults in detail. His view is all the more worth attention because it is that of a man of letters and philosophy who was also practically conversant with official work, and not that

<sup>1</sup> The population of Prussia bears much the same proportion to that of Bavaria, the next largest State, as does England to Scotland or Ireland.

of a politician living in mid-arena amid the blinding dust-storms of current party controversy. He said of the Americans :—

“ As one watches the play of their institutions the image suggests itself to one’s mind of a man in a suit of clothes which fits him to perfection, leaving all his movements unimpeded and easy. It is loose where it ought to be loose, and it sits close where its sitting close is an advantage. The Central Government of the United States keeps in its own hands those functions which, if the nation is to have real unity, ought to be kept there; those functions it takes to itself and no others. The State Governments and the Municipal Governments provide people with the fullest liberty of managing their own affairs, and afford, besides, a constant and invaluable school of practical experience.”

The burden of proof lies heavily upon those who advocate any large constitutional change. Yet the existing centralisation of England, Scotland, and Ireland is not so antique or sacro-sanct that no modification may even be considered. A “true development” has been described as “one which is conservative of the course of development which went before it; which is that development and something besides.”<sup>1</sup> With this test the federalisation of the United Kingdom would comply, since it would preserve the political union completed in 1801, while it relieved the burden of the central Government and Parliament, and restored a sufficient life of their own to the several countries united. A system which

<sup>1</sup> Newman in “Essay on Development,” p. 87. He was following a far greater historical authority, Niebuhr, who had expressed the view that an institution should be but a fuller development of, or addition to, what already exists.

has proved its merit in Canada, which is now, in its broad lines, adopted in Australia, and is in contemplation as the best remedy to heal the wounds of South Africa, may indeed not be suitable to the United Kingdom, but cannot be deemed by any man of sense to be beyond the bounds of reasonable and practical discussion. In any case the Irish question exists, and, as Bacon has said, "where a great question exists *it will not fail to be agitated.*" Ireland continues to return without change or fail at every election a large majority of representatives pledged to support the cause of Home Rule; the desire of that people is constant; and, if ever again British parties are as nearly balanced as they were in 1885, the question must return for decision. It is well that it should be coolly discussed while there is still a great Unionist majority. If some years hence this majority is overthrown, it may be wrongly decided amid a storm of passion.



PART IV

THE EMPIRE





# PART IV

## THE EMPIRE

### CHAPTER I

#### THE QUESTION AT ISSUE

BEYOND these issues of policy internal to the United Kingdom lie far larger questions still dim in the distance, yet visibly approaching the frontier of urgency. The twentieth century will probably see the decision of the question whether the British Empire will break up, or whether it will live in a closer unity. If the Empire should dissolve, England would doubtless decay and decline, exhausted by the effort of creating so many new States, and now unfitted by her history and economic condition to become again a self-contained and self-supporting country. If the Empire be consolidated into a closer unity, this again involves the merging of England in the Empire. The United Kingdom, like the Kingdom of Prussia, will cease to be a distinct Great Power, becoming the first province of a greater.

The history of England resembles that of Rome. The Roman dominion was built up by a conquering city, warring during centuries of slow growth against the independence of stubborn, because kindred, neighbours; then victoriously overthrowing powerful riva



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for Mediterranean empire, then rapidly expanding its rule in every direction, subduing on the one side the young barbarian races of the West, on the other the decaying kingdoms of the East. Last of all, the proud city, reluctant and striving against destiny, was fused in the Empire by itself created. It ceased gradually to be a sovereign republic, and became a capital. It may seem to the historian of a thousand years hence that, in these large outlines, the history of Rome was repeated in that of England. The English have ever been a fighting, colonising, conquering race. They conquered and colonised England itself, drove out, slew, or enslaved the former inhabitants, and took possession of the soil, much as their descendents took possession of North America. They, the practical Saxons, were reinforced by a race with greater genius for war, conquest, and administration than for colonisation and agriculture, the daring and imaginative Normans. Without this infusion the English, it is likely, would have colonised America and Australia, but would hardly have created the Indian Empire. Next, the Anglo-Normans, as they should now be called, planted themselves in Ireland, and they warred for centuries against their Scottish neighbours. For a hundred years they spent enormous pains in the attempt to conquer the far more rich and pleasant land of France, pains wasted, except in so far as they toughened the national character. Shut up at last in their own island, they waged long and most ferocious wars with each other. Feudal England destroyed itself, and commercial England began to rise out of the ruins of the Middle Ages. The Reformation was the religious form taken by this change. Now began the Oceanic career of England.

When Elizabeth came to the throne the conquests in France had long been lost. In Ireland she ruled, at her accession, over an English colony, surrounded by a wild ring of half-subdued clans. Scotland was an independent kingdom; the trans-Oceanic Empire had not begun to be. In the course of the next three and a half centuries, a space no longer than the lives of old cottages like that where Shakespeare was born, or of oaks still growing in Windsor Forest, Scotland and Ireland have been made integral parts of the English realm; India has been conquered and brought under a great officialdom; self-governing Colonies united to the Crown have arisen in America, Australasia, and Africa; the seas are dotted with islands and military posts belonging to the British Empire, and, last of all, the imperial conception has arisen like a spirit seeking embodiment. This period corresponds to the three centuries in Roman history before the birth of Christ.

While the British Empire arose the powers held and exercised by the Crown in the Tudor days have, by a process of internal change, passed to Ministers who are, through the intermediate agency of the House of Commons, practically chosen and kept in office, or dismissed from it, by the will of the majority of the people of the United Kingdom.

Edmund Burke, in a soaring flight of one of his American speeches, said:—

“The Parliament of Great Britain sits at the head of her extensive Empire in two capacities: one as the local legislature of this island, providing for all things at home immediately and by no other instrument than her executive power. The other and, I think, her nobler capacity is what I call her imperial character; in which, as from the throne of heaven, she superin-

tends all the several inferior legislatures, and guides and controls them without annihilating any. As all these provincial legislatures are only co-ordinate to each other, they ought all to be subordinate to her, else they can neither preserve mutual peace, nor hope for mutual justice, nor effectually afford mutual aid."

The Imperial Parliament has never abandoned its theoretic claim, or reserved right, to legislate in every respect for every portion of the dominions of the Crown, notwithstanding the existence of inferior legislatures. In theory the right exists unabated, and, in practice, the British Parliament has on several occasions passed laws affecting the whole Empire. Of this kind was the Act of 1824 prohibiting slave-trading, and the Act of 1833 emancipating slaves. In the present reign the Copyright Act (5 & 6 Vict. c. 45) enacts that its provisions shall extend to every part of the British Dominions, and defines that term as including "all the colonies, settlements, and possessions of the Crown."<sup>1</sup> A general principle of importance was laid down by the Act 28 & 29 Vict. c. 63, which declares that "any colonial law repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate shall, so far as repugnant, be void." While, on the one hand, no colonial legislation can over-ride any imperial legislation intended to apply to the Colonies; on the other, as Professor Dicey says, "No lawyer questions that Parliament could legally abolish any colonial constitution, or that Parliament can at any moment legislate for the Colonies, and repeal or over-ride any colonial law whatever."<sup>2</sup> Nor does the theoretic claim to

<sup>1</sup> One might also refer to the Vice-Admiralty Court Act, 30 & 31 Vict. c. 45, sec. 16, and the Currency Act, 29 & 30 Vict. c. 65.

<sup>2</sup> Dicey's "British Constitution," p. 102.

plenary sovereign power stop short of the right of taxation. The constitutional lawyer has abandoned that impossible attempt to draw a distinction between fiscal and other modes of legislation which was made during the American conflict by many political reasoners in England and America. "If Parliament," says Professor Dicey, "were to-morrow to impose a tax, say on Victoria, or on the Canadian Dominion, the statute imposing it would be a legally valid enactment." It might, indeed, cause a political revolution, but judges would have no excuse for not recognising its validity in courts of law.

So, Mr. Justice Blackburn said in his charge to the Grand Jury on the trial of Governor Eyre in 1868: "Although the general rule is that the Legislative Assembly has the sole right of imposing taxes on the colony, yet when the Imperial Legislature chooses to impose taxes, according to the rule of English law, they have the right to do it."

It is characteristic of the English, with their blended common-sense and reverence for precedent, that practice should widely diverge from theory. In theory, the monarch can, of his own free will, dismiss and appoint any Minister as he likes, dissolve his Parliament, and rule without one, himself conduct all the affairs of the Empire; in practice, he "reigns, but does not govern," except indirectly by influence and advice. So also, when autonomy has been given to colonies, the Imperial Parliament, with rare exceptions, ceases to pass laws which affect their domestic affairs. The Imperial Parliament in this sphere reigns but governs not. But if the direct guidance and control now exercised by the British Parliament is less than it was to Burke's lofty imagination, yet the metropolitan



authority has been turned to one new and dignified purpose. No colonial constitution, when he spoke, was based upon an Act of the British Parliament; they were all founded upon charters emanating directly or indirectly from the royal prerogative. This is so no longer. The Imperial Parliament is the fountain whence flows all legislative authority within the Empire.<sup>1</sup> The great Indian system is derived from Westminster. The supreme legislative and executive power of the Viceroy in Council, subject to the ultimate sanction of the Secretary of State, is so vested by a series of Acts of Parliament. The central and provincial Legislative Councils in India, and the High Courts of Justice in the three Presidencies, rest upon the same foundation. Every colonial constitution, every Legislative Council and Parliament, is founded upon a British Act of Parliament. The Assembly by the Thames is justly called the "Mother of Parliaments." It is true, however, that, where the great Colonies are concerned, the Imperial Parliament does but seal, as it were, and give force to, the will of the colonial peoples. The Canadian Constitution of 1867 was passed through Parliament without a division, just as it had been framed by the leading statesmen of the several Canadian provinces, in consultation with each other, and with the Secretary of State.

The Australian Commonwealth Bill of 1900 came to Westminster with still greater weight behind it, for its principles had been submitted by a direct reference to the vote of the electorate in the several Colonies concerned. The Australian Premiers desired that it should be passed without alteration, and professed at first that, by reason of the reference to the electorate,

<sup>1</sup> Technically, of course, it is the Crown, with assent of Parliament.

they were unable to give their assent to any substantial change whatever. The Premier of one of the federating Colonies even said in a public speech, "There will be no safety or security for Australian union until it is known that the Bill that Australia has drafted for the Imperial Parliament to pass word for word is passed by that august tribunal word for word."<sup>1</sup>

With Burke's proposition, that colonial Legislatures are "only *co-ordinate* to each other" and "*subordinate*" to the British Parliament, we may compare and contrast the position taken by the Imperial Government when they proposed to amend the constitution drafted by the Australians, by altering the clause which, in certain cases, interdicted appeals to the Judicial Committee of the Privy Council. The Colonial Office Memorandum of March 29, 1900, contains this passage:—

"An examination of the covering clauses shows that they deal with matters in which Australia, being a part only of her Majesty's dominions, could not properly claim to have a final voice. They affect in important respects the prerogative of the Crown, and the powers and privileges of the Imperial Parliament, and of the Legislatures of other parts of the Empire. In regard to these matters, the Imperial Parliament and Government are in the position of trustees for the whole of her Majesty's dominions, and the responsibility attaching to that trust makes it incumbent upon them to examine with the utmost care any proposal which would in any degree affect their power to discharge the trust efficiently."

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<sup>1</sup> Speech by the Rt. Hon. G. H. Reid, Premier of New South Wales, made in August 1899.

To the same effect Mr. Chamberlain said in his speech introducing the measure that "the position of the Imperial Parliament is that of trustee for the Empire." According to Burke, and, *a fortiori*, according to the less liberal thinkers of his day, the colonial Legislatures were co-ordinate only with each other and were subordinate to the British Parliament. Now we say that, although the supreme legal power remains vested in the British Parliament, it holds that power as a trustee. But a cestui-que-trust is not subordinate to a trustee; rather a trustee is one who, so long as the desires of the cestui-que-trust are within the limits of law, obeys and carries them out. This analogy, drawn from the law of property, is the cover under which is recognised the change, due really to the growth and will-to-live of the new States, whereby Colonies, once subordinate to, have now become co-ordinate to the metropolitan Parliament, although forms to express such co-ordination have not yet been fully evolved. The trusteeship is a phrase to mask the change.

Burke, bred and living under the old commercial system, had in his mind, as one chief attribute of the Imperial Parliament, the exclusive power to regulate the commercial relations of the different parts of the Empire to the metropolis and to each other. This power has, most of all, fallen into disuse. The United Kingdom has adopted free trade for herself, and has allowed each colony to regulate its commercial policy as it pleases. A colony may either adopt free trade or may shut out as much as it desires the goods of the rest of the Empire. There is no commercial unity of the British Empire, though India, because India is truly subordinate, is practically obliged to keep open ports.

Just as there is at present no commercial unity of the British Empire, so there is no formal unity in foreign, naval, or military policy. There is no political machinery for formally ascertaining and expressing in action, in these matters, the united will of the great States which compose the Empire. If the Crown is at war with any foreign Power, it follows that Canada, Australia, South Africa, and all other dominions are, by their allegiance, engaged in the hostilities. But the policy which leads to the war is solely determined by the Committee of Ministers proceeding from and responsible to the British Parliament; and they also, though they may choose to consult Colonists, have full power to make peace when and upon what terms they deem advisable. At a time when the foreign policy of these Ministers is satisfactory to the Colonists, they may be driven from power by a general election in the United Kingdom turning chiefly upon questions of local interest. A Prime Minister who is defending the interests of Australia in the Pacific may fall from power in mid-negotiations because he does not see his way to establishing a system of old age pensions in England, and be replaced by one who will, indeed, carry through a scheme of pensions, but is unwilling to present a bold front to the rivals of the Southern Commonwealth. A liquor or ecclesiastical question in England, or an Irish university difficulty, may disappoint Canadian hopes of obtaining a passionately desired rectification of frontier.

That the present system has hitherto worked well is due partly to the fact that the Colonies are only of late coming of age, and partly to the fact that, since the Crimea, England has engaged in no war with a Great Power, nor with a great naval rival since

Trafalgar, and that foreign policy has run tolerably smoothly. It is due also to the fact that, although government in England is upon a democratic basis, the management of high affairs has always been in the hands of two sections of the same aristocracy bred in the same school, whose differences are superficial, or, so to speak, forensic. It makes little difference with regard to foreign policy whether Lord Salisbury or Lord Rosebery or Lord Kimberley is at Downing Street. But there is no guarantee for the continuance of this harmony and official understanding. If a second democratic leader of the force and ardour and faith of Mr. Gladstone were to break his way into the charmed circle, permanence in foreign policy might easily disappear. In any case it is certain that, as the Colonies grow into powerful States, there must be change in the present arrangement. It also is certain that the change will reduce the power of the Parliament of the United Kingdom, or destroy its sole control, "as from the throne of heaven," of the fortunes of the Empire. The language of our publicists and statesmen recognises the fact that the British Parliament and Government is but a temporary holder or trustee of directing policy and power.

The Parliament of the United Kingdom may have reached, and even already passed, the culminating height of its power and influence. It has already been pointed out that the delegation sooner or later of part of its functions to local Parliaments for each of the three Kingdoms is a possible and desirable solution of internal difficulties. On the other side it is not in human nature that, when Canada, Australia, and South Africa hold populations not very unequal

to that of the United Kingdom, they will still be content to see imperial affairs managed by men who rise and fall at the bidding of one section of the Empire, even if it be the most ancient, the most central, the richest, and the strongest.

The Parliament at Westminster will remain, as it were, the "Metropolitical See" of the Empire, but the British electorate cannot for ever be the sole electors of the great officials who conduct the high policy affecting the fortunes of Australia, Canada, and Africa, as well as of these islands. If the lost American Colonies had remained in allegiance to the Crown, but had become a federal Dominion, this monopoly before now would have been proved to be impossible. So long as the later Colonies were insignificant in population, so long as the whole military and naval cost, in men and money, of defending Imperial interests was borne by the United Kingdom, it was natural that British Ministers and Parliament should have sole control of foreign, naval, and military policy. But of late years some of the Colonies have made, as a beginning, a small contribution towards the fleet. In the South African War of 1899-1901 the Colonies equipped and sent (although they did not pay or maintain) bodies of valuable troops to fight against the Dutch Republicans as part of the Imperial army. Military aid, especially if in future the Colonies pay and maintain their own troops when on active service, must imply a voice in the policy which leads to war and in the terms of peace or settlement effected by war. "What we did," said the Canadian Premier,<sup>1</sup> "we did of our own free will, and as to future wars I have only this to say, that, if it should be the will

<sup>1</sup> In the Canadian Parliament, 13th March 1900.

of the people of Canada at a future stage to take part in any war of England, the people of Canada will have their way. Of course," he added, "if our future military contribution were to be considered compulsory—a condition which does not exist—I would say to Great Britain, 'If you want us to help you, call us to your councils.'"

Canadians were obliged only by their own "free will," it is true, to send troops to aid in warring down two small inland Republics in South Africa, who could not possibly have attacked the territory or injured the sea-borne trade of Canada, but if there were a war between Great Britain and the United States, or some naval Power, the Canadians, as subjects of the Crown, would be involved in it, of necessity, whether they willed or no. Sir Wilfrid Laurier would then have to frame his argument thus: "Inasmuch as we are involved in the consequences of your policy, you must admit us to consultation with regard to that policy." The material importance of the great Colonies has now reached such a point that it can hardly be doubted that their formal admission to Council would be one result of the ever possible conflict with the United States, or with the European Powers. Their advice and assent would be required in regard of the foreign policy of those allied States which are covered by the name of the British Empire. A serious war would precipitate the result which, in any case, time must bring to pass, if the Empire is destined to hold together. And thus England will have to melt into the British Empire even as Rome, proud Rome, had to melt into the Roman. England, the metropolitan country, must ever hold the first place in point of honourable primacy or precedence, but in respect of

controlling power she will hold but that place to which she is entitled by her relative population and resources. The United Kingdom will be to the Colonies a metropolis, not a paramount power.

Roman history teaches that institutions moulded by past conditions to suit the needs of a compact and homogeneous commonwealth cannot meet those of a great and diverse empire. The historian Mommsen, discussing the decline of the Roman popular assembly, writes :—

“ While the burgesses had quite sufficient capacity to discern their municipal interests, it was foolish and utterly ridiculous to leave the decision of the highest and most difficult questions which the Power that ruled the world had occasion to solve to a well-disposed but fortuitous concourse of Italian farmers, and to allow the nomination of generals and the conclusion of treaties of State to be finally judged of by people who understood neither the grounds nor the consequence of their decrees.”

The Westminster Parliament cannot be described as a fortuitous concourse of English farmers ; yet it is a concourse of persons resident in, and mostly natives of, these islands, brought together in a somewhat fortuitous fashion. Some there are who sit in Parliament by right of birth ; others because they are rich and have given large assistance to party organisation ; others because by their energy (consuming all their attention and power of thought) in some trade, they have benefited the town in which they live, and are in their ripe age, with minds moulded by local affairs, rewarded by their fellow-townsmen with the gift of a seat in Parliament. Among other Legislatures, that sitting at Westminster holds an honoured



place. The electorate is still, on the whole, perhaps, notwithstanding its modern change from a rural to a great-city character,<sup>1</sup> as sane and wise as that of other countries. Yet this Parliament and electorate are certainly not wise above all other Parliaments and electorates. Except when there is a war or a great crisis in foreign policy, they are naturally more interested in the domestic affairs of their islands than in those of the Empire and world at large; and when

<sup>1</sup> The following passage from a recent book called "The Heart of the Empire" (Fisher Unwin) deserves consideration :—

"The England of the past has been an England of reserved, silent men, dispersed in small towns, villages, and country homes. The England of the future is an England packed tightly in such gigantic aggregations of population as the world has never before seen. The change has been largely concealed by the perpetual swarm of immigrants from the surrounding districts, which has permeated the whole of such a town as London with a healthy, energetic population reared amidst the fresh air and quieting influences of the life of the fields. But in the past twenty-five years a force has been operating in the raw material of which the city is composed. The texture itself has been transformed as if by some subtle alchemy. The second generation of the immigrants has been reared in the courts and crowded ways of the great metropolis, with cramped physical accessories, hot, fretful life, and long hours of sedentary or unhealthy toil. . . . The physical change is the result of the city upbringing in twice-breathed air in the crowded quarters of the labouring classes. This as a substitute for the spacious places of the old, silent life of England, close to the ground, vibrating to the lengthy, unhurried processes of Nature. The result is the production of a characteristic physical type of town dweller: stunted, narrow-chested, easily wearied; yet voluble, excitable, with little ballast, stamina, or endurance—seeking stimulus in drink, in betting, in any unaccustomed conflicts at home or abroad. Upon these city generations there has operated the now widely spread influence of thirty years of elementary school teaching. The result is a mental change; each individual has been endowed with the power of reading, and a certain dim and cloudy capacity for comprehending what he reads. Hence the vogue of the new sensational press, with its enormous circulation and baneful influence. . . . A change more vital and ominous for the future is widely attested by those familiar with this new city type: the almost universal decay, amongst these massed and unheeded populations, of any form of spiritual religion. Morally, indeed, they for the most part accept a standard which is the astonishment of their friends. Patience under misfortune, a persistent cheerfulness, family affection, and neighbourly helpfulness are widespread amongst them. But the spiritual world, whether in Nature, in Art, or in definite Religion, has vanished, and the curtain of the horizon has descended round the material things and the pitiful duration of human life."

they suddenly attend to the affairs of the Empire and world, they bring much ignorance and party passion and cheap sentiment and excitability to bear on these subjects. An expectation of an "Irish row" fills every seat in the House of Commons, while the Indian financial statement is made to empty benches. When the important, though unsuccessful, South African Federation Act of 1877 was being debated in a thin House, a fine and penetrating speaker of those days, Mr. Joseph Cowen of Newcastle, said :—

"It is an accusation repeatedly made against the House in the Colonies and in India, that, while personal questions and paltry matters of privilege attract large audiences and excite much interest, important projects affecting the welfare of millions of their fellow-citizens in distant dependencies are only curtly considered in the presence of a small assembly of members."

The common business of an Empire can be conducted by a great official hierarchy, like that of later Rome and modern Russia. Or it may be controlled, after the German mode, by a Council of expert representatives of the diplomatic type chosen for that special purpose by the free governments of each part of an Empire. But the work of supervision is done with less advantage by a popular assembly elected by a single portion of an Empire, and chiefly occupied with the domestic affairs of that portion.<sup>1</sup>

<sup>1</sup> One difficulty connected with the government of a great Empire by men depending upon a local democracy was pointed out by the second Lord Elgin in the year 1857 :—

"The secret" (he wrote) "of governing a democracy is well understood by men in power at present. Never interfere to check an evil until it has attained such proportions that all the world see the necessity of the case. You will *then* get any amount of moral and material support that you require ; but, if you interfere at an earlier period, you will get neither

It will, to resume the subject, appear to the future historian that the system of the British Empire, since its existence began towards the close of the sixteenth century, passed through three chief phases of growth. In the first phase, the Mother Country did, through her political institutions, largely control in fact, and supremely in theory, and at the cost of a colossal disaster in practice, all the affairs of British subjects both at home and beyond the sea. In the second phase, the Colonies—those at least who were deemed capable of self-control—were given full power over their own affairs, but the Mother Country retained the whole foreign policy of the Empire, and defrayed and conducted the whole military and naval defence. In the third phase, which began to appear at the end of the nineteenth century, the Colonies, while keeping full power over their domestic affairs, were admitted to partnership with the Mother Country. They contributed towards imperial defence and had a voice in determining imperial policy.

The American Colonies broke away from Great Britain because an attempt was made, in full accordance with the older idea then dominant, to make them contribute to imperial defence without having a voice in imperial policy or power to assent to their contribution. In the second phase of development the Colonies neither contributed nor had a voice in imperial policy. The third phase will be a synthesis of the two first. The Colonies will both contribute and have a voice. The beginning of the contribution we have lately seen, but in what way will the voice be expressed?

thanks nor assistance. I am not at all sure but that the time is approaching when foresight will be a positive disqualification in statesmen."

The present Prime Minister, Lord Salisbury, has, I think, in recent speeches made remarks to the same purport.

## CHAPTER II

### CONCLUSION

No living Englishman has, for good and bad, by his merits and his errors, his failures and achievements, written his name more largely across the history of the age and in characters more indelible than has the founder of Rhodesia. Mr. Rhodes is the combination of a strong and daring will, a wide-reaching imagination, and large practical common-sense. His ideas are certainly entitled to attention. In the year 1888, when Mr. Rhodes was thirty-five years old, he had a correspondence and an interview with the Irish leader, Mr. Parnell, with regard to the Home Rule question. Mr. Rhodes, whose experience has made him as strong an advocate of autonomy in the internal affairs of each State as he is of federal union between contiguous States, and of the supreme imperial tie, was disposed to favour Home Rule in Ireland if this policy could be divorced from that of separatism. He said in one of his letters to Parnell that, "if the Irish are to be conciliated and benefited by the grant of self-government, they should be trusted, and trusted entirely." Nor did he fear the "Ulster question," taught, as he said, by his South African experience, that "since the Colonial Office has allowed questions at the Cape to be settled by the Cape Parliament, not only has the attachment to the imperial tie been immeasurably strengthened, but the Dutch, who form the majority of the population, have shown a greatly increased con-

sideration for the sentiments of the English members of the community." He added: "It seems only reasonable to suppose that in an Irish Parliament similar consideration would be given to the sentiments of that portion of the inhabitants which is at present out of sympathy with the national movement." Mr. Rhodes saw well the practical reason for conceding Irish Home Rule. "At present there can be no doubt that the time of Parliament is overcrowded with the discussion of trivial and local affairs. . . . Now the removal of Irish affairs to an Irish Legislature would be a practical experimental step in the direction of lessening the burden upon the central deliberative and legislative machine." But he objected to the Bill of 1886 for the reason that it altogether deprived Ireland of representation in the Imperial Parliament, and he wished Parnell to assent to the principle, in the event of another Home Rule Bill being brought in, that Irish members, in proportion to the Irish contribution to imperial expenditure, should sit in the Imperial House of Commons. He said that he chiefly desired to secure this as a precedent for a system "by which the self-governing Colonies could from time to time, as they expressed a desire to contribute to imperial expenditure, be incorporated with the Imperial Legislature," and he proposed that in a future Irish Home Rule Bill a clause should be inserted enabling any colony to claim representation at Westminster proportionate to its contribution to imperial purposes, such as the Army, Navy, and Diplomatic Service. In this intercourse Mr. Rhodes found Parnell to be, as he long afterwards said, the "most reasonable and moderate of men."<sup>1</sup> As a recent writer has said, the two men resembled

<sup>1</sup> See Mr. O'Brien's "Life of Parnell."

each other in having the "vision for essential facts."<sup>1</sup> Parnell agreed that "the exclusion of the Irish members from Westminster was a defect in the Home Rule measure of 1886, and that this proposed exclusion may have given some colour to the accusations so freely made against that Bill that it had a separatist tendency." He cordially agreed with Mr. Rhodes' proposals, and promised to support them. Mr. Rhodes then made a contribution of £10,000 towards the funds of the Irish party, as a proof, he wrote, of his deep and sincere interest in the question, and of his belief that the action of the Irish on this basis would lead "not to disintegration, but really to a closer union of the Empire, making it an Empire in reality and not in name only." "I gave," said Mr. Rhodes in a speech made three months later at the Cape, "I gave Mr. Parnell's cause £10,000, because in it, I believe, lies the key of the Federal system, on the basis of perfect Home Rule for every part of the Empire, and in it also the imperial tie begins." These proceedings and subsequent communications between the Irish and English Liberal leaders were the source of the retention in the Bill of 1893 of a reduced number of Irish representatives at Westminster, although there was no clause opening, as Mr. Rhodes wished, a door to future similar colonial representation. Probably a weak Government thought the Bill of 1893 already as much as it could manage without this additional complication.

The desire of Mr. Rhodes and of Mr. Parnell to combine local liberty with a strong tie of central union does honour to both of these distinguished public men, but the means to this end proposed by the former

<sup>1</sup> "Cecil Rhodes : His Political Life and Speeches, 1881-1900," by Vindex, p. 842. The letters are given in an appendix to this interesting book.

could not have succeeded. The objection taken by the opponents of the measure of 1893 to the retention of even a limited number of Irish representatives, was extremely strong. We shall cease, they said, to have power over the internal affairs of Ireland, while the Irish will have power of intervening in the internal affairs of England and Scotland. They will be able to maintain in Ireland the Government which suits them, and at the same time may be able to help to overthrow in England a Government which suits, perhaps, the majority of us. Nor is there any possible way of confining Irish representatives at Westminster to action upon strictly imperial affairs. This objection would be all the stronger if not only Irish representatives, but an indefinite number of colonial representatives (in proportion to an indefinite contribution), were entitled to sit and vote at Westminster in an Assembly which dealt not only with imperial but with internal English and Scottish affairs. It would be confusion worse confounded. The system could only be justified on the ground that the number of colonial representatives would at first be very small, that it was an interim method pending the establishment of one better, and that the practical advantages would outweigh the objections arising on grounds of logic and constitutional principle. Would the practical advantages be great? We are brought to this dilemma. Either the Colonies would send a representation proportionate to their wealth and population, and then outsiders would exercise too much influence on the domestic affairs of the United Kingdom, or they would send only a few spokesmen, who would play an insignificant part in the Imperial Assembly, and would probably soon lose touch of

colonial opinion and become mere units of English political society. To adopt this device would be to take a wrong turning, and although the first step on a false path is but a small thing in itself, yet from it a great and fatal deviation may come. The idea of colonial representation in the existing Parliament of the United Kingdom must be dismissed.

It has been suggested that the affairs of the United Kingdom should, according to reason, be transacted in a Parliament distinct from the sub-national legislatures which would transact those of England, Scotland, and Ireland. In the same way it is to be held that if there is any Parliament for the affairs of the whole Empire, it must be a body distinct from those Parliaments which control the local affairs of the United Kingdom, the Canadian Dominion, the Australian Commonwealth, New Zealand, and the future United States of South Africa. Whether any such distinct Imperial Parliament is possible, or desirable, time alone will prove. There is certainly much yet to be done in the construction of the lower parts of the fabric of the imperial edifice before it becomes possible. One cannot add the roof and pinnacles to a building before the first floor has been finished. In theoretic vision, indeed, one can imagine the completed palace. One can *imagine* a system under which the great federal States of the Empire, the United Kingdom, Canada, Australia, Africa—each with its minor planetary legislatures such as England, Ireland, Quebec, Cape Colony, New South Wales—should find a common centre in a single imperial Parliament standing distinct from and equally above them all, composed of representatives elected by every part of the Empire, and having for its sphere of action



all foreign and commercial policy, the supreme direction of military and naval defence, communication of all kinds between different parts of the Empire, copyrights, patents, currency, and so forth. There would then be a vast symmetrical Empire bound together by free consent, and resting throughout upon the principle of representative government, having legislative and administrative organs for transacting respectively local or municipal affairs, those of the minor State or province, those of each federation, and finally those of the Empire as a whole. There would neither be confusion of parts nor division of supreme unity. Thus would be realised the view of the eighteenth century writer, Pownall, so often quoted in the first part of the present work, namely, that as the British Isles with their oceanic possessions are, in fact, united into "*one grand marine political community*," so they ought "by policy to be united into a one *imperium* in a one centre, where the seat of government is. And ought to be governed from thence by an administration founded on the basis of the whole, and adequate and efficient to the whole."

But what is a Parliament? As we now understand the varying idea, it is a body directly elected by the people, entrusted with binding legislative and taxing powers, controlling, by its power of overthrowing them, the appointment and conduct of the Great Officers of the State. How could a system of this kind be fitted to the circumstances of an Empire scattered over the "seven seas," and of an Oriental as well as Occidental civilisation?

A federal Parliament is possible for England, Ireland, and Scotland, or for the Canadian Provinces, or the Australian States, because in each of these

cases the natural union is sufficiently close, but the estranging oceans which lie between the United Kingdom, Canada, South Africa, and Australia, are too broad. One may say of this idea of an imperial federal Parliament that which Burke said in his speech upon Conciliation with America, of a scheme then put forward for a representation of the American Colonies in the British Parliament :—

“ Perhaps I might be inclined to entertain some such thought; but a great flood stops me in my course, *opposuit natura*. I cannot remove the eternal barriers of the creation. The thing in that mode I do not know to be possible. As I meddle with no theory, I do not absolutely assert the impracticability of such a representation. But I do not see my way to it, and those who have been more confident have not been more successful. However, the arm of public benevolence is not shortened, and there are often several means to the same end. What Nature has disjoined in one way, wisdom may unite in another.”

The elementary business of the governing Assembly of a federal union, as well as that of a single State, is the raising by compulsory taxation of a common fund for common expenditure. It is not possible to conceive a supreme Parliament without this power. The most obvious and usual means of raising this money is by a customs union, and this implies a common commercial policy. How near is the British Empire to the realisation of these elementary conditions?

The United Kingdom during the last fifty or sixty years, influenced by social and economic changes within itself, has abandoned the old protective policy of which England had formerly been a leading ex-

ponent, and has adopted a system of free trade, subject to a few exceptions, such as tea, wine, and tobacco. We did not insist upon the adoption of this new policy by the Colonies; those which were self-governing did not, for the most part, adopt it; and thus the commercial unity of imperial policy, so strongly adhered to before the American War, was broken.

The extreme point of legalised commercial disintegration within the British Empire was, perhaps, that reached in the year 1873, when, at the instance of Australian Colonies, the Imperial Parliament somewhat reluctantly passed an Act quite opposed to the general commercial principles never more than then dominant in England, and gave to those Colonies perfect freedom to tax each other's goods. This Act repealed a previous Act of the year 1850,<sup>1</sup> by which the Australian Colonies were forbidden to impose differential duties as between the Colonies and any other countries. The Act of 1850 was passed under the idea that the free trade policy adopted by Great Britain was as soon as possible to be the policy of the whole Empire, and it was intended to prevent the imposition of duties by the colonial legislatures inconsistent with the principle of free trade. They were left free to raise revenue by customs duties, but subject to the condition of not contravening by a protective policy the rule of free trade. With this object differential duties were forbidden. The departure from these principles in 1873 gave occasion for an interesting debate in the House of Lords. The Minister who introduced the Bill, Lord Kimberley, said, that "As we had given the Australian Colonies self-government, it was perhaps better that in the

<sup>1</sup> 13 and 14 Vic. c. 59.

matter of customs regulations we should assume that the Colonies knew their own business better than we knew it."

Earl Grey disapproved of the Bill as being "a new step in that policy which is fast converting the connection of the British Colonies with the Mother Country into a merely nominal instead of a living bond of union." He continued thus, a passage worth quoting in full, because it shows the movement of ideas :—

"If the Colonies and the United Kingdom are in any true sense to form one Empire, it is obvious that there must exist some single and paramount authority to ensure that, on subjects of general and common interest, all the separate communities that form the Empire shall act in concert, and shall co-operate with each other. Each distinct community may be free to act for itself in its own internal administration, but unless all are subordinated to the imperial authority where the general interest is concerned, there is no Empire. But, among the subjects which are most clearly of common concern, next to their joint defence against aggression, comes that of a common commercial policy. This, till of late years, has been universally held to be so obviously true as to be beyond dispute. In the early days, indeed, of our Colonies, the opinion held both here and throughout Europe was that colonies were only valuable for the commercial advantages to be derived from them. The Mother Country insisted on a monopoly of supply to the Colonies, and they in return were allowed either a monopoly or the privilege of supplying on better terms than other countries certain articles of produce to the parent State, the right of regulating the manner in which this intercourse was carried on being exercised without dispute by Parliament. . . . And when

at length there came a change of opinion as to the wisdom of the old system of colonial trade, and when it was swept away and the system of free trade was established, it was not even imagined that the imperial Parliament and Government were to forego their old authority of settling what was to be the commercial policy of the whole Empire. On the contrary it was considered that the policy of free trade would be deprived of much of its advantage if it were not consistently followed throughout the Empire."

And, in special reply to Lord Kimberley, who had so freely abandoned principle in favour of immediate expediency, the older Statesman said:—

"I cannot concur in this view of the subject, and, if it is to be acted on, I should wish to know in what manner the Queen's authority is to be maintained at all. If that authority is to be upheld by requiring the Colonies to conform to the general commercial policy of the Empire; if the imperial Government is to have no voice in determining upon the commercial measures of the Colonies, and we are even to allow them to impose protective duties more hostile to British interests than the duties of most foreign nations, it seems to me that it will become a very serious question whether it will be well to maintain the connection. . . . Is it not probable that the people of this country may say, 'If we are to exercise no power over the Colonies, nor to derive any advantage from them, we decline to incur the responsibility of protecting them'?"

A speech like that of Earl Grey is interesting, because it makes one feel the constant movement and change in things, and therefore—since "thought is the slave of life"—in ideas. The political mind of the speaker had been formed under conditions which

had already ceased to exist. The younger men in 1873 saw facts more as they were. Lord Kimberley said that "to interpose a veto was a very serious matter indeed," that "these communities were growing powerful; they were self-reliant, and displayed all the independent feelings of Englishmen;" and Lord Carnarvon, in the same debate, proved himself a better prophet than Earl Grey, saying that "in the long run we should be able to reconcile what had hitherto been deemed to be irreconcilable—namely, the freedom of the Colonies and their dutiful allegiance to the Mother Country." It is difficult for old men to extricate their minds from ideas dominant in their youth.

The retreat in 1873 from the position taken up in 1850 denoted the intervening growth of the Colonies,<sup>1</sup> and signalised the abandonment of the idea that the Parliament of the United Kingdom could assert or practise its theoretical right to legislate on colonial domestic affairs. The English who live in England can keep open the gates of India, and even of a reluctant China; they cannot, in practice, compel a single self-governing colony to admit freely British goods. We have travelled far since the days when Chatham and Burke asserted as an unquestionable truth the sovereign control of the commercial policy of the Empire by the British Parliament. This Parliament is seen now to be that which it really is—namely, the Parliament of the United Kingdom, controlling all the affairs of these islands, but restrained from action in many directions by the independent existence

<sup>1</sup> The total population of the Australian Colonies was in 1828 only 53,000. In 1861 it had risen to 1,157,000, and it is now over four millions.

of its own offspring, the Colonial Parliaments. If a common commercial policy is to be adopted for the whole Empire, it can only be in one of two ways: either the United Kingdom and every self-governing colony must, by agreement, pass the same legislation relating to customs duties, or there must be a Federal Parliament of the whole Empire controlling this branch of legislation.

On the 12th February 1891 a travelled and keen-sighted Irishman, Lord Dunraven, discussed a thesis proposed to the House of Lords, that "all the subjects of the Queen are interested in securing that the forces of the Crown should be able to protect them in either offensive or defensive war, and therefore that all the subjects of the Queen should contribute in due proportion to the maintenance of those forces." This proposal he considered to be untenable as a practical policy, because it could not be carried out without a revolutionary change in the Constitution. "It would require the creation of a Parliament or a deliberative body of some kind, which should have the power of raising taxes for the maintenance of the forces of the Crown, and, of course, of dealing also with questions of peace and war, and all other questions in reference to which the forces of the Crown might be called on to operate." Lord Dunraven thought, however, that a naval force might be raised by agreement, and that, meanwhile, the unity of the Empire might be cemented if the several States composing it would agree to admit each other's goods upon terms more favourable than those upon which they admitted the goods of outside powers. Lord Dunraven said:—

"The ties that bind the Empire together are no doubt strong, but, practically speaking, they are ties

of sentiment; community of origin, of race, blood, and religion, common institutions and common traditions, all the ties which arise from common ancestry, and very strong ties they have proved themselves. There is one tie, however, . . . which is wanting—community of material advantage.”

Ties of sentiment, he said, must tend to become weaker and weaker as interests shifted from the original to the adopted land. Community of interest should therefore be aimed at.

“Such community of interest can only be gained in one of two ways: either by commercial federation, or by preferential treatment. I look upon commercial federation of the Empire as a dream. I do not need to say it is a dream incapable of realisation, but absolute free trade throughout the Empire I look upon, for practical purposes, as nothing but a dream. But preferential treatment, the granting of special advantages within the Empire, is by no means a dream.”

For this end, he said, there would have to be some departure from free trade principles, but this would be justified by the purpose of preserving the unity of the Empire. Some such sacrifice of free trade principle might, he thought, if boldly proposed, be accepted by the British people; for, said he:—

“The notion of a great Empire occupying the four corners of the earth, advancing steadily in the paths of peace and progress under one flag, allowing complete freedom to develop in every possible direction, according to their own individualities, and at the same time knitted together by the great tie of sentiment as well as of material advantage, is an idea which would commend itself not only to the people of the United Kingdom, but to those of all the Colonies of the British Empire.”



Lord Salisbury replied that Lord Dunraven's proposal was impracticable of achievement in the present state of public opinion in England. "If," he said, "you wish to set up a discriminating system in favour of the Colonies as against the rest of the world, just consider what are the goods on which you would have to levy a heavy duty in this country in order to make the discrimination felt. They are grain, wool, and meat. What chance have you of inducing the people of this country to accept legislation which would make these essential articles of consumption susceptible of such tariffs?" Lord Salisbury added :—

"Whenever such a modification of English opinion takes place—if ever it takes place—so that this idea of discrimination of duties in favour of colonial produce shall be a fiscal possibility, I, at all events, shall not oppose the wish of my noble friend to have the matter thoroughly discussed between us and the Colonies."

Obviously the question is difficult. The inhabitants of the British Isles are now mainly an urban population of consumers, living upon wages and investments, and anxious to obtain food and clothing as cheaply as possible. Can they be induced by enthusiasm for the unity of the Empire, so to increase the price of these necessities, by taxing exports from the United States and elsewhere, as to confer an advantage upon the Colonies (and the agricultural minority at home) who produce these things? On the other hand many of the Colonies are endeavouring to build up manufacturing industries behind the wall of protective tariffs, just as the English Legislature did with so much success in former days. Are the Colonies prepared to throw down these walls on the

side of their most formidable rival in the market, the Mother Country, while maintaining or increasing their weight as against the rest of the world?

In 1894 the members of the official inter-colonial conference held at Ottawa expressed their opinion in favour of a customs arrangement between Great Britain and the Colonies, with the object of placing trade within the Empire upon a more favourable footing than trade with outside countries. This question was again discussed when Mr. Chamberlain met the Colonial Premiers in conference in the Jubilee year 1897. He referred in his opening speech to the history of the German Zollverein, or Customs Union, an institution which, as he pointed out, began as a "commercial convention" dealing in the first instance only partially with the trade of the States concerned, was afterwards extended to the whole of that trade, and "finally made possible, and encouraged the ultimate union of the Empire." The Colonial Secretary admitted, however, that "the fiscal arrangements of the different Colonies differ so much among themselves, and all differ so much from those of the Mother Country, that it would be a matter of the greatest complication and difficulty to arrive at any conclusion which would unite us commercially in the same sense in which the Zollverein united the Empire of Germany." This difference is the natural result of the fact that the German Empire is confined to a territory as compact and homogeneous as that of Great Britain or France, whereas the British Empire consists of States scattered all over the world, and differing by every degree of climate and circumstance in their needs and productive capacities. The assembled Premiers were unanimous in asking the British Government to terminate certain treaties with Germany and

Belgium which prevented the Colonies from giving an exclusive preference to British goods (a step which our Government has since taken), and they undertook to "confer with their colleagues" in order to ascertain whether the Colonies could consent to give "a preference to the products of the United Kingdom." In one case this conference has borne practical fruit, for the Canadian Dominion Parliament have since then enacted a large abatement in their Customs duties so far as regards British produce.<sup>1</sup> We may be on the way towards a system of reciprocal differential duties between different parts of the Empire in favour of each other. But we are far, at present, from the erection of a joint fund, derived, as in the German Empire, from Customs duties upon extra-imperial produce, and applicable to naval, military, and other expenditure for imperial objects.

If a common taxation for defraying the imperial expenditure cannot be established, the basis for a federal Parliament of the whole Empire does not exist. There can be no real Parliament, whether of a national or of a federal State, without common revenue and expenditure, and full power of raising money and controlling its application.

It seems, therefore, that—

<sup>1</sup> When the charter of the Chartered Company in South Africa was being drafted in 1889, Mr. Rhodes secured the insertion of a provision that the tariff on *British* goods entering Rhodesia should not exceed that of Cape Colony, which is a low tariff on manufactured articles. The home authorities wished to insert instead the words "duty on *imported* goods." "They," said Mr. Rhodes, "fought for the word '*imported*,' and I fought for the word '*British*.' Some were in favour of it, but some said they belonged to the old school, that there was a scent of protection in my view, and that they were free traders. I said the day will come when the wars of the world will be tariff wars: that is going to be the future policy of the world." ("Cecil Rhodes's Political Life and Speeches," by Vindex, p. 698.)

(1) The proposal that the Colonies should be represented in the existing Parliament of the United Kingdom cannot be accepted.

(2) A Federal Parliament for the whole Empire is not possible, or, at least, will for long remain impossible.

Yet some solution of the problem must be found if the British Empire is to utilise its strength and to serve imperial purposes. Sir Wilfrid Laurier, the Canadian Premier, said on 14th March 1900:—"If you want us to help you, call us to your councils." The British taxpayer might reply: "If you want us to help you, make a free-will contribution, in proportion to your resources, to the cost of the Empire." The following summaries published by the "Imperial Federation (Defence) Committee," illustrate the subject in a striking way from the point of view of the citizen of the overburdened United Kingdom. The first summary (published in 1899) relates to naval expenditure, and is as follows:—

"The Royal Navy protects the commerce of the entire Empire. The value of this commerce is . . . . .		£ 1,204,000,000
The sea-borne commerce of the United Kingdom is . . . . .		766,000,000
The sea-borne commerce of the self-governing Colonies is . . . . .		222,000,000

"Thus it will be seen that Colonial Commerce forms one-fifth of the total trade of the Empire.

"For the naval protection of the trade of the Empire there is paid an annual sum of . . . . .		£ 25,224,000
Of the above total, the United Kingdom pays . . . . .		24,734,000
Self-governing Colonies in North America, Australasia, and South Africa pay . . . . .		177,000

*“ Thus it will be seen that the Colonies, which possess one-fifth of the trade, contribute less than one-hundredth of the cost of protecting the trade. Ninety-eight hundredths are contributed by the taxpayer of the United Kingdom.*

“The following table shows the revenue and population of the United Kingdom and the self-governing Colonies respectively :—

	Revenue.	Population.
United Kingdom . .	£104,000,000	39,000,000
Self-governing Colonies	46,000,000	12,000,000

“It will thus be seen that though the Colonies contribute less than one-hundredth part of the cost of the naval defence of the Empire, their population is close upon one-third of that of the United Kingdom, and their revenue is nearly half that of the United Kingdom.”

Two years earlier, in 1897, Sir Michael Hicks-Beach had said in a speech :—

“As Chancellor of the Exchequer I am bound to put before you the fact that forty millions of people in the United Kingdom pay twenty-two millions a year to the cost of our common navy, while ten millions of people of the same race in our Colonies pay but a few thousands a year and find very few men. That cannot and ought not to be a permanent settlement of the relations between the great self-governing Colonies and the United Kingdom. . . . I do not think for a moment that, conscious of their power as great nationalities, they would wish to shirk those responsibilities on the ground on which formerly they might fairly have claimed exemption, when struggling and poor communities. It is a matter on which her Majesty’s Government and the Governments of the Colonies ought to take council together speedily, and I hope and trust that it may be settled by some satisfactory conclusion.”

The Colonies contribute more to the military than to the naval defence of the Empire, since they support their own militias. For offensive war outside their own territories, Canada, Australia, and New Zealand, can and will, as recent experience has shown, provide troops of the finest quality, but the inadequacy of their contribution towards numbers, and, above all, towards the cost of an imperial armament, is displayed in the second summary by the Imperial Federation Committee, which was published in the summer of 1900, and relates to the South African War, as the figures stood at that date. It is as follows:—

“It is estimated that there are engaged in the war in South Africa on behalf of the British Empire—

206,442 men; 54,325 horses; 609 guns.

Of these, Australasia produces	7,000 men
Canada . . . . .	3,000 „
South Africa . . . . .	21,000 „
India and Ceylon produce	625 „

“These troops have, generally, been equipped at the expense of the countries from which they came; except in the case of South Africa, where most of the troops enrolled have been equipped at the cost of the United Kingdom, and in the case of the Australasian Bushmen Corps, numbering about 3000.

“The large preponderance of men enrolled in South Africa is due to the presence in those Colonies of the population of Johannesburg, thrown out of employment by the war.

“The United Kingdom has put in the field about 184,000 men.

*“The United Kingdom pays, pensions, and provides return transport for the Colonial troops, as well as its own, and provides all food, stores, clothing, remounts, and munitions of war required in the field.*

“The expenditure upon the war by the United Kingdom to the end of the current financial year has been estimated at £114,000,000.”<sup>1</sup>

It is strangely inequitable, if we are all to be deemed members of one Empire, that the poor peasant in the west of Ireland, or in the lonely Hebrides, or in Shetland, and the half-starved dock labourers in the east of London, should have to bear a financial burden from which energetic and well-to-do Australians are almost exempt. Not only do dwellers in the United Kingdom have to bear the cost of modern wars, while the Colonies share in the excitement and glory and any advantages which may accrue, but in the shape of interest upon the National Debt we also bear a large part of the cost of past wars fought in the interests of the whole Empire. In the German Empire are some fifty-six million inhabitants, all of whom share equitably in the imperial burden. In the British Empire are some fifty-two million white inhabitants, yet the great mass of the imperial burden—the cost of past wars and present, and the normal annual military and naval expenditure—is borne by forty millions of them, and among these forty millions are, if some of the richest, yet also much of the poorest part of the white population of the Empire. The poorest already, and likely to grow poorer yet if this inequality of burden shall continue. It is true that in India a population containing a still larger proportion of extreme poverty bears a large part of the weight of the imperial fabric. Previously to the Union the Irish Parliament provided pay for the Irish

<sup>1</sup> This estimate proved excessive. The war expenditure to 31st March 1901, was, in fact, about £90,000,000. The *estimated* cost to 31st March 1902, was, however, £148,000,000.

regiments while serving abroad with the rest of the British army. Canada and Australia and New Zealand might do as much now. That they do not, is due, it is to be hoped, not to their unwillingness, but to the fact that the forms through which the underlying unity may act and express itself are as yet wanting.

Two questions, then, demand solution. The first is, In what way shall the Colonies contribute their share towards military, naval, and other imperial expenditure? The second, In what way shall the Colonies be admitted to a share in the control of the policy which governs this expenditure? In short, how shall the Colonies contribute to the cost of the Empire and take part in its councils?

Institutions should follow nature and be adapted to existing facts. The British Empire stands in point of natural compactness less solid than such continental unities as the United States or the German Empire; on the other hand, it is far more than a mere alliance held together by treaty like the Triple Alliance. It is not a Federal State and it is not a mere alliance, but it is a thing between the two, viz., a Confederation of States held together by the union of each to the same Crown, which also is the Crown Imperial of India. It is becoming clear that the path of immediate advance lies not in the creation of an organ of sovereign will controlling, in certain respects, the whole of this Empire, or, in other words, a Federal Parliament, but in the creation of institutions enabling the several wills of the free states of the Empire to work more easily and effectively together, or, in other words, of an Imperial Council advising the Crown, and acting as a medium between the several Confederated States and the great executive officers



who conduct those affairs, foreign, naval, military, and commercial, which affect the interests of the whole Empire. The consolidation into a single Federal Commonwealth of the Australian States, following the example of the Canadian Provinces, greatly facilitates this higher outgrowth. In the discussion in 1877 of the permissive South African Federation Bill—that premature measure, destined to become an Act, to exist a while in the void, and then to vanish like a bursting bubble—a speaker well versed in Colonial affairs, Sir Henry Holland,<sup>1</sup> said :—

“To those who, like myself, hope to see these great, outlying dependencies linked more closely to the Mother Country by some kind of direct representation, confederation affords the only chance of seeing that hope realised. You cannot have twenty or thirty small councils or assemblies represented here; but link together in confederation the West India Islands as you have linked the North American Provinces; join together the South African States, the great Australian Colonies, and perhaps our other Eastern Colonies, and you have four or five Central Legislatures which might at some future time be directly represented here. This may be an ‘airy nothing,’ a dream; but confederation alone can give it a ‘local habitation and a name.’”

Even if no further step in the direction of more formal imperial confederation should be taken, yet the very existence of great federations like those of Canada and Australia vastly increases the weight in council of those countries. It is not in future likely that any great step in foreign or commercial policy will be taken by the London government without

<sup>1</sup> Some years later, as Lord Knutsford, Secretary of State for the Colonies, during Lord Salisbury's second administration

consulting the Canadian and Australian Premiers, and this by itself secures some of the objects of formal federation.

The keen-sighted statesman who, in 1886, suggested the true solution of the internal difficulty of the too closely bound together United Kingdom, viz., its *decentralisation* upon the Canadian model, has also suggested that which seems to be the best way of achieving the greater *centralisation* of the too loosely connected British Empire. Mr. Chamberlain in his opening speech at the Colonial Conference in 1897, said :—

“I feel that there is a real necessity for some better machinery of consultation between the self-governing Colonies and the Mother Country, and it has sometimes struck me—I offer it now merely as a personal suggestion—that it might be possible to create a great Council of the Empire to which the Colonies would send representative plenipotentiaries—not mere delegates, who were unable to speak in their home without further reference to their respective Governments, but persons who, by their position in the Colonies, by their representative character, and by their close touch with Colonial feeling, would be able, upon all subjects submitted to them, to give really effective and valuable advice. If such a Council were to be created, it would at once assume an immense importance, and it is perfectly evident that it might develope into something still greater. It might slowly grow to that Federal Council to which we must always look forward as our ultimate ideal. And to a Council of this kind would be committed, in the first instance, the discussion of all minor subjects of common interest, and their opinion would be taken and would weigh most materially in the balance before any decision were come to either by this country or by the

legislatures of the several colonies in regard to such matters."

Mr. Chamberlain did not suggest the creation of a Federal Parliament with powers of binding legislation and taxation, but of an Imperial Council for the purpose of consultation, advice, and recommendation of measures to the several Governments and Parliaments of the States composing the Empire. It was not inconsistently with this that he went on to say:—

"It may be that the time has come, and, if not, I believe it will come when the Colonies will desire to substitute for the slight relationship which at present exists, a true partnership, and in that case they will want their share in the management of the Empire, which we like to think is as much theirs as it is ours. But, of course, with the privilege of management and of control will also come the obligation and the responsibility. There will be some form of contribution towards the expense for objects which we shall have in common."

In a later part of his speech Mr. Chamberlain called attention to the great cost of the navy and military forces of the United Kingdom, and showed that they were maintained in the interests of the whole Empire.

If a Council of this kind existed, it should become the organ of control and contribution in matters of imperial concern. It could advise with regard to military and naval organisation, foreign and colonial policy, oceanic communication of all kinds, and trade relations and regulations. It could also devise, recommend, and when need was, modify, a scheme of voluntary contribution to common expenditure by the several states of the Empire. Even if in this matter

the members of the Council were not "representative plenipotentiaries," there can be no doubt that the recommendation of such a body would carry almost irresistible weight with the Parliaments of each State. It would hardly be possible that, for instance, New Zealand should refuse to abide by the judgment of the rest of the Empire as to the right proportions of contribution. A share in control might eventually become conditional upon acceptance of the will of the majority in respect of contribution, and, in any case a proposal of this kind would come with very different force from a Council representative of the whole Empire than if it proceeded from the Government of the United Kingdom alone.

A Council of this kind would in some respects (though by no means in others) resemble the Bundesrath, or Federal Council, of the German Empire, a body which really is a continuation in a changed form of the old Diet of the Confederation of German States, whence the modern Empire arose. The Bundesrath has been described as a "mixture of Legislative Chamber, Executive Council, Court of Appeal and permanent assembly of diplomats." It is composed of delegates appointed by the Governments of the several States of the Empire, the Kingdom of Prussia contributing seventeen out of the fifty-eight. The delegates act under the instructions of their respective Home Governments, and vote by States, so that, *e.g.*, a single delegate can give the whole of the Prussian vote. The true conception of this body is that of an assembly of representatives of the several sovereign States Governments. There are eight standing committees of the Bundesrath,<sup>1</sup> viz.: those on the army, navy, imperial taxes and customs, trade, railroads,

<sup>1</sup> Established by Art. 8 of the Constitution.

posts and telegraphs, justice, and accounts. The members of the military and naval committees are appointed by the Emperor, those of the rest by the Bundesrath itself. There is a ninth committee on foreign affairs, constituted in a special way. The consent of the Bundesrath is required for a declaration of war, except in the case of a sudden attack upon the Empire, and for a "federal execution" against a refractory State refusing to comply with the laws of the Empire. It also, as a High Court, decides disputes between the Imperial and State Governments about the interpretation of statutes, and in some matters of a public character serves as a court of appeal against State Courts. Although in legislative matters it acts as a second or upper chamber to the Reichstag, the elected Chamber, the Bundesrath can also sit when the Reichstag is not in session. Its meetings are always secret and with closed doors.<sup>1</sup>

The peculiar character of the Bundesrath has been dictated by the history and circumstances of the German Empire, and part of its constitution and functions would not be applicable to an Imperial Council for the British Empire. Yet statesmen who had in mind the formation of such a Council would find it useful to examine the nature and working of this institution. In Germany there is the Bundesrath, or Federal Council of State delegates, and there is also the Reichstag, the popular elected Assembly of the Empire. There seem to be possibilities in the idea of a Bundesrath without a Reichstag, for the purpose of giving a form to British imperial unity.

<sup>1</sup> See an excellent book by an American writer, Mr. Lowell, "Government and Parties in Central Europe," vol. i. A careful study of the Modern German Empire by an English writer, like Mr. Bryce's book on the United States, seems to be a desideratum.

The Colonial Conference of 1897 adopted the following resolutions on the question of the political relations between the United Kingdom and the self-governing Colonies :—

“ 1. The Prime Ministers here assembled are of opinion that the present political relations between the United Kingdom and the self-governing Colonies are generally satisfactory, under the existing condition of things.

“ 2. They are also of opinion that it is desirable, whenever and wherever practicable, to group together under a federal union those Colonies which are geographically united.

“ 3. Meanwhile, the Premiers are of opinion that it would be desirable to hold periodical conferences of representatives of the Colonies and Great Britain for the discussion of matters of common interest.”

The last two resolutions were carried unanimously ; but two of the Premiers<sup>1</sup> dissented from the terms of the first resolution, “ because they were of opinion that the time had already come when an effort should be made to render more formal the political ties between the United Kingdom and the Colonies.” The official report proceeds thus :—

“ The majority of the Premiers were not yet prepared to adopt this position, but there was a strong feeling amongst some of them that with the rapid growth of population in the Colonies, the present relations could not continue indefinitely, and that some means would have to be devised for giving the Colonies a voice in the control and direction of those questions of imperial interest in which they are concerned equally with the Mother Country. It was recognised at the

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<sup>1</sup> Mr. Seddon and Sir E. N. Braddon.

same time that such a share in the direction of imperial policy would involve a proportionate contribution in aid of imperial expenditure, for which, at present at any rate, the Colonies generally are not prepared."

On the whole, the feeling of the Colonial Governments in 1897 seems to have been that the process of local federation must be carried further before anything resembling formal imperial federation should take place, and that the Colonies, being still absorbed in the work of developing their own resources, were not yet prepared to bear a proportionate part of imperial expenditure, a condition recognised by them, however, as naturally attaching to a formal share in the direction of imperial policy. In some degree the hesitation of 1897 may have been modified by the events of 1900—namely, the establishment of the Australian Commonwealth and the war in South Africa. But the immediate line of advance is probably in the direction of the development and formalisation of the conferences so successfully held in London in 1887 and 1897. There seems to be no reason why his Majesty's Government should not now invite the Colonies to assent to the formal constitution of a consultative council meeting at fixed intervals, instead of upon occasions inspired by special events, in order to consider questions of common interest. This Imperial Council might meet in London every second or third year at least, and, perhaps, leave there a permanent committee to keep in touch with the central offices, to discuss intermediate business, and to prepare questions for the consideration of the next general council. A Council of this kind would acquire great and continually increasing weight and authority. Its recommendations with regard to foreign, military, naval, and commercial affairs would

have a powerful influence with all the States united by common obedience to the British throne. The members of the Imperial Council would hold the rank of Privy Councillors. Like the German Bundesrath, they would be formed into committees for the different subjects with which they had to deal. Thus, in effect, there would be foreign, naval, military, and commercial committees of the Privy Council, just as there is already a Judicial Committee advising the King upon legal questions submitted to him in the last resort from all quarters of the British world.

In this connection questions lately arising upon the Australian Commonwealth Act are of interest and importance. According to the theory of the British Constitution, all judicial, as well as all legislative power, is vested in the holder of the Crown. But, as the King legislates through Parliament, so he exercises his judicial powers through various courts of law. All law courts are, earlier or later, emanations from the royal power, and of these the Judicial Committee of the Privy Council, *in its present form*, is one of the latest. Technically this tribunal is not a court in the full sense, because it does not, like other courts, decide in its own name, but gives advice to the Crown, which is then embodied in an Order in Council. The Privy Council long ago heard legal appeals from places not strictly within the realm, and therefore not subject to the other courts, such as the Channel Islands, and, as the Empire has grown this jurisdiction has grown with it, and the Judicial Committee of the Council has been regularised or formalised by Act of Parliament. It has become the Supreme Court of Appeal for the British Empire outside the United Kingdom, as the



Judicial Committee of the House of Lords is the supreme tribunal inside the United Kingdom.

In 1871 the question of the jurisdiction of the Privy Council was raised upon the motion of some of the Australian Colonies. The Privy Council then sent in a memorandum<sup>1</sup> to the effect that the appellate jurisdiction of her Majesty in Council existed for the benefit of the Colonies and not of the Mother Country, and that this part of the prerogative had always been exercised, and was still a powerful link between the Colonies and the Crown, and added some other reasons.

The question was again discussed in 1875, when the Supreme Court of Canada was created, and in a second memorandum the Privy Council said that—

“This power has been exercised for centuries, as regards all the dependencies of the Empire, by the Sovereign in Council; and by this institution, common to all parts of the Empire beyond the sea, all matters whatever requiring a judicial solution may be brought to the cognisance of one court in which all have a voice. To abolish this controlling power, and to abandon each colonial dependency to a separate court of appeal of its own, would obviously be to destroy one of the most important ties connecting the different parts of the Empire in common obedience to the courts of law, and to renounce the last and most essential mode of exercising the authority of the Crown over its possessions abroad.”

This position was challenged by Clause 74 of the Australian Commonwealth Constitution, as prepared by the convention in Australia, and approved by the vote of the Australian electorate. This clause ran thus—

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<sup>1</sup> Quoted by Mr. Chamberlain in introducing the Australian Commonwealth Bill, May 15, 1900.

"No appeal shall be permitted to the Queen in Council in any matter involving the interpretation of this constitution, or of the constitution of a state, unless the public interest of some part of her Majesty's dominions other than the Commonwealth as a state are involved. Except as provided in this section, this constitution shall not impair any right which the Queen may be pleased to exercise, by virtue of the royal prerogative, to grant special leave of appeal from the High Court to her Majesty in Council. But the Parliament (of Australia) may make laws limiting the matters in which such leave may be asked."

Thus it was proposed to cut off from the jurisdiction of the Crown in Council the most important branch of law under a federal constitution, that relating to questions as to the constitutionality of statutes passed by the Central and State Parliaments, *i.e.* the interpretation of the Constitution; and furthermore, to enable the Australian Parliament to cut off by a bill, at any time, any other branches of this jurisdiction.

The Colonial Office Memorandum of 29th March 1900, after setting forth numerous special objections to the clause at issue, continued thus:—

"In conclusion, it should be remembered that the question must be looked at from a still wider point of view. The retention of the prerogative to allow an appeal to her Majesty in Council would accomplish the great desire of her Majesty's subjects both in England and Australia, that the bonds which now unite them may be strengthened rather than severed, and, by insuring uniform interpretation of the law throughout the Empire, facilitate that unity of action which will lead to a real federation of the Empire."

The Australian delegates in their reply said that they were unable to understand how we should by

insuring uniform interpretation of the law throughout the Empire effect the result thus predicted. They said that "unity of action" and "uniform interpretation of the law" were "wholly unrelated and certain to remain so," and they added, with a fine mixture of eloquence and humour:—

"The consciousness of kinship, the consciousness of a common blood, and a common sense of duty, the pride of their race and history, these are the links of Empire, bonds which attach, not bonds which chafe. When the Australian fights for the Empire he is inspired by these sentiments, but no patriotism was ever inspired or sustained by the thought of the Privy Council."

The question was settled by a compromise. In cases arising as to the frontier line of the powers of the Commonwealth and the States, or between the several States, the High Court of Australia is to have power to allow or to disallow appeals from its own decisions to the Crown in Council.<sup>1</sup>

The controversy called public attention to a certain inadequacy in the form and constitution of the Judicial Committee to its position and functions. It has not been a court possessing the distinction and status of the Supreme Court of the United States. It has no outward glory. It has not always been a very strong legal tribunal, especially when a simultaneous sitting of the House of Lords, as a court, has drained it of some of its strength. But the real objection is, that it is a tribunal in which the Colonies have had no direct share, just as the United Kingdom Parliament is a Legislature which does not immediately represent them. The United Kingdom has its own supreme

<sup>1</sup> See Appendix II.

court of appeal in the House of Lords, composed of eminent lawyers who have risen to fame in these islands. We have our own Supreme Court as we have our own Parliament. But just as the only conceivable Imperial Parliament of the Empire must be one equally outside of and above the British Parliament, as well as outside and above the Canadian and Australian Parliaments, so no supreme court which is practically an institution of the United Kingdom can altogether satisfy the Colonies. In this respect also, in the judicial sphere as well as in the legislative, the course of things must merge the metropolitical country in the Empire which her sons have created.

The Australians, in advocating the retention of the clause making the Colonial Supreme Court the final Court of Appeal in constitutional questions, used this argument: "You have deemed our statesmen to be capable of framing our constitution and amending it in the future. Surely our judges must be capable of interpreting it. Why should we refer questions which most intimately concern ourselves to *what is practically an English tribunal?*" "Australians," the delegates wrote, "are not so un-British as to admit that 4,000,000 of them cannot properly conduct their own affairs, or properly choose judges who can say, better than any authority elsewhere, what those Australians mean in their constitution."

It is clear that the time has arrived at which, if the Colonies are to accept willingly a Supreme Court of Appeal having its seat in London, it must be one which they can feel to be theirs in proportion to their relative importance in the imperial system. The first recognition of this necessity was the system adopted by the Home Government in the year 1896. An Act

of Parliament enabled the Crown to summon to the Judicial Committee a representative of Canada, another of Australia, a third from South Africa. No provision was made for the payment of salaries to these members of the committee. Consequently it was necessary to select colonial judges who were still in active service in the several Colonies. One result of this was that they were unable to be permanently present in London. Another, that, when they were present, cases might arrive for decision with which they themselves had dealt in the Colonies. To remedy these disadvantages the Government proposed in 1900, pending consideration of any larger scheme, to appoint for terms of seven years a representative for each of the three great Colonial sections and one for India, to be members of the Privy Council and also Lords of Appeal, and Life Peers, with the salaries of Lords of Appeal paid from the exchequer of the United Kingdom. But upon further communication with the Colonies it was found that they preferred to await a larger measure, the establishment of a representative supreme tribunal for the whole of her Majesty's dominions. The question was, in 1901, referred for discussion to a Colonial Conference. The result should be that the distinction between the appeal jurisdiction of the House of Lords for the United Kingdom, and that of the Judicial Committee of the Privy Council for India and the Colonies will disappear, and that there will be one Supreme Court of last resort dealing with appeals from every part of the Empire, including the United Kingdom. A court of this kind, sitting, one would hope, in some state and impressive surroundings, composed of legal sages who had lived their lives and acquired

their experience in all quarters of the Empire, deciding questions arising in England, Scotland, and Ireland, in India, in Canada, in Australia, in South Africa, and the isles of the sea, would be a far truer symbol of the Empire than is the present Judicial Committee, which, except in ecclesiastical cases, has no jurisdiction in the United Kingdom. Indeed, such an august tribunal would be a far truer symbol of the Empire than is the Parliament now sitting at Westminster, and would prepare the way for a permanent and comprehensive Imperial Council.

Thus far, and no farther, have we advanced towards the realisation of Pownall's vision of "one grand marine political community united by policy into a one *Imperium* in a one centre, where the seat of government is," and "governed from thence by an administration founded on the basis of the whole, and adequate and efficient to the whole." Since Pownall wrote, the British Empire has increased vastly in size and complexity, and the difficulty of the problem is in some ways not diminished. On the other hand the immense development of intercommunication effected by steam and electricity makes for union. In the eighteenth century, if contrary winds prevailed, it might cost a man, or a letter, or a newspaper, a voyage of two months to reach the nearest American shore.<sup>1</sup> Now, the essential part of a speech made in London one evening by an English statesman can be printed next morning in the Australian newspapers, and a traveller can reach Montreal as quickly as he could then reach the west of Ireland or the north of Scotland. It is possible for the London Government to obtain in a few hours the opinion of the Canadian

<sup>1</sup> e.g., see account in Wesley's Journals of his passage to America.

and Australian Cabinets upon policy to be adopted in consequence of an event which has taken place in Africa the day before.

If, then, in conclusion, a conjecture may be hazarded as to the future, based upon the tendency of history in the past, and upon the actual state of things in the present, one may surmise that there will be, not a Parliament of the Empire in the sense in which the Assembly at Westminster is the Parliament of the United Kingdom, not a body invested with sovereign powers of legislation and taxation, but an Imperial Council acting as an intermediary between the great officers of state and each part of the Empire, conveying the wishes and opinions of the nations concerned to the Imperial Executive, and recommending, conversely, to their own Governments the measures suggested by that Executive and approved by themselves. This development would be accompanied by the gradual detachment from the special affairs and political life of the United Kingdom of the officials who are charged with the care of those naval, military, and external affairs in which the whole Empire is jointly interested. One can even imagine a system under which these high officials were appointed by the Crown, in conformity with the wishes of the Imperial Council, and held office, not as now, so long as the Cabinet to which they belonged was supported by the majority in the British House of Commons, but for a term of years, after the fashion of the Viceroy of India.

There must be, indeed there visibly is, a rise in importance of the Throne. In the nineteenth century the actual power of the Crown in connection with the internal affairs of the United Kingdom almost

seemed to vanish, but during the same century the significance and influence of the Monarchy—its spiritual sovereignty, so to speak—has expanded in a vastly wider sphere. What it has lost in respect of domestic, it has gained, and far more also, in regard of imperial affairs. At present the direct relations of India, Canada, Australia, New Zealand, Africa and the rest, are with the Crown. It is not merely the symbol but the real bond of unity. As, without the relation of each of its provinces to the Supreme Pontiff, the cosmopolitan and many-nationed Church which centres at Rome could not hold together, so, without the relation of each of its parts to the King, the British Empire would fall asunder and be dispersed. What, indeed, are English cabinet ministers to the princes of India? Not even names. How many among the Indian millions, or those other darker and barbarous millions who live behind the African coast, have so much as heard of the existence of the British Parliament? Even Canadians and Australians, our own kinsmen, are but faintly interested in the struggles and questions of political parties here in England; they have their own affairs. And, conversely, how many men in England could recite the names of the present Prime Ministers of each Colony? But in all these lands, east and west, the holder of the Throne is to every man his own sovereign. A Real Presence, if one may so speak, makes itself felt throughout the world. An ordinary English nobleman goes out to India, or to Canada, or to Australia, and carries with him, such is the magic of imagination, the atmosphere of imperial majesty. It is not race, nor law, nor common language, nor similar institutions, nor religion, nor military force that holds



together this strange aggregation of many races, many laws, many languages, many institutions and kinds of government, many religions, and strong peoples capable, if they chose, of achieving independence. The bond is not the British Parliament; it is not the British Cabinet; it is the Imperial Crown. To this central point all lines converge from all the ends of the earth. Ideas to rule men through imagination must be incarnate; and, if they are to rule great masses of men in every degree of civilisation and intelligence, must be embodied in a form easily understood by the simplest through their experience of family life. There are not many Miltons in the world whose strength of imagination can clothe abstractions, and a Republic, like some forms of religion, is only suited to a few homogeneous peoples. England or Australia might be a Republic; not so the British Empire.

On a lovely June morning, in the year 1897, a wondrous pageant moved through the enchanted streets of London. Squadron by squadron, and battery by battery, a superb cavalry and artillery went by—the symbol of the fighting strength of the United Kingdom. There went by also troops of mounted men, more carelessly riding and more lightly equipped—those who came from Canada, Australia, New Zealand, and South Africa to give a deeper meaning to the royal triumph; and black-skinned soldiers and yellow, and the fine representatives of the Indian warrior races. Generals and statesmen went by, and a glittering cavalcade of English and Continental princes, and the whole procession was a preparation—for what? A carriage at last, containing a quiet-looking old lady, in dark and simple attire; and at every point where this carriage passed through seven miles of London streets,

in rich quarters and poor, a shock of strong emotion shot through the spectators, on pavement and on balcony, at windows and on housetops. They had seen the person in whom not only were vested the ancient kingdoms of England, Scotland, and Ireland, but who was also at once the symbol and the actual bond of union of the greatest and most diversified of secular empires.



# APPENDICES



## APPENDIX I

### 30 VICT. C. 3—DOMINION OF CANADA CONSTITUTION ACT

*Note.*—Some sections of the following Act are omitted, as being of merely temporary effect or interest, or as not material to the present purpose.

#### C A P. I I I.

An Act for the Union of *Canada, Nova Scotia, and New Brunswick*, and the Government thereof; and for Purposes connected therewith.

[29th March 1867.]

WHEREAS the Provinces of *Canada, Nova Scotia, and New Brunswick* have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of *Great Britain and Ireland*, with a Constitution similar in Principle to that of the United Kingdom :

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the *British Empire* :

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared :

And whereas it is expedient that Provision be made for the eventual Admission into the Union of other parts of *British North America* :

Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

#### I.—PRELIMINARY.

1. This Act may be cited as The *British North America Act*, Short Title. 1867.

Application  
of Provi-  
sions refer-  
ring to the  
Queen.

2. The Provisions of this Act referring to Her Majesty the Queen extend also to the Heirs and Successors of Her Majesty, Kings and Queens of the United Kingdom of *Great Britain and Ireland*.

## II.—UNION.

Declaration  
of Union.

3. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that, on and after a Day therein appointed, not being more than Six Months after the passing of this Act, the Provinces of *Canada*, *Nova Scotia*, and *New Brunswick* shall form and be One Dominion under the name of *Canada*; and on and after that Day those Three Provinces shall form and be One Dominion under that Name accordingly.

Construc-  
tion of sub-  
sequent  
Provisions  
of Act.

4. The subsequent Provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the Day appointed for the Union taking effect in the Queen's Proclamation; and in the same Provisions, unless it is otherwise expressed or implied, the Name *Canada* shall be taken to mean *Canada* as constituted under this Act.

Four  
Provinces.

5. *Canada* shall be divided into Four Provinces, named *Ontario*, *Quebec*, *Nova Scotia*, and *New Brunswick*.

Provinces of  
*Ontario* and  
*Quebec*.

6. The Parts of the Province of *Canada* (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of *Upper Canada* and *Lower Canada* shall be deemed to be severed, and shall form Two separate Provinces. The Part which formerly constituted the Province of *Upper Canada* shall constitute the Province of *Ontario*; and the Part which formerly constituted the Province of *Lower Canada* shall constitute the Province of *Quebec*.

Provinces of  
*Nova Scotia*  
and *New*  
*Brunswick*.

7. The Provinces of *Nova Scotia* and *New Brunswick* shall have the same Limits as at the passing of this Act.

Decennial  
Census.

8. In the general Census of the Population of *Canada* which is hereby required to be taken in the Year One thousand eight hundred and seventy-one, and in every Tenth Year thereafter, the respective Populations of the Four Provinces shall be distinguished.

## III.—EXECUTIVE POWER.

Declaration  
of Execu-  
tive Power  
in the  
Queen.

9. The Executive Government and Authority of and over *Canada* is hereby declared to continue and be vested in the Queen.

10. The Provisions of this Act referring to the Governor General extend and apply to the Governor General for the Time being of *Canada*, or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of *Canada* on behalf and in the Name of the Queen, by whatever Title he is designated.

Application of Provisions referring to Governor General.

11. There shall be a Council to aid and advise in the Government of *Canada*, to be styled the Queen's Privy Council for *Canada*; and the Persons who are to be Members of that Council shall be from Time to Time chosen and summoned by the Governor General and sworn in as Privy Councillors, and Members thereof may be from Time to Time removed by the Governor General.

Constitution of Privy Council for *Canada*.

12. All Powers, Authorities, and Functions which under any Act of the Parliament of *Great Britain*, or of the Parliament of the United Kingdom of *Great Britain* and *Ireland*, or of the Legislature of *Upper Canada*, *Lower Canada*, *Canada*, *Nova Scotia*, or *New Brunswick*, are at the Union vested in or exercisable by the respective Governors or Lieutenant Governors of those Provinces, with the Advice, or with the Advice and Consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any Number of Members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union in relation to the Government of *Canada*, be vested in and exercisable by the Governor General, with the Advice or with the Advice and Consent of or in conjunction with the Queen's Privy Council for *Canada*, or any Members thereof, or by the Governor General individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of *Great Britain* or of the Parliament of the United Kingdom of *Great Britain* and *Ireland*) to be abolished or altered by the Parliament of *Canada*.

All powers under Acts to be exercised by Governor General with Advice of Privy Council, or alone.

13. The Provisions of this Act referring to the Governor General in Council shall be construed as referring to the Governor General acting by and with the Advice of the Queen's Privy Council for *Canada*.

Application of Provisions referring to Governor General in Council.

14. It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor General from Time to Time to appoint any Person or any Persons jointly or severally to be his Deputy or Deputies within any Part or Parts of *Canada*, and in that Capacity to exercise during the Pleasure of the Governor General such of the Powers, Authorities, and Functions of the Governor General as the Governor General deems it necessary or expedient to assign to him or them, subject to any Limitations or Directions

Power to Her Majesty to authorize Governor General to appoint Deputies.



expressed or given by the Queen ; but the Appointment of such a Deputy or Deputies shall not affect the Exercise by the Governor General himself of any Power, Authority, or Function.

Command of armed Forces to continue to be vested in the Queen.

15. The Command-in-Chief of the Land and Naval Militia, and of all Naval and Military Forces, of and in *Canada*, is hereby declared to continue and be vested in the Queen.

Seat of Government of Canada.

16. Until the Queen otherwise directs, the Seat of Government of *Canada* shall be *Ottawa*.

#### IV.—LEGISLATIVE POWER.

Constitution of Parliament of Canada.

17. There shall be One Parliament for *Canada*, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

Privileges, &c., of Houses.

18. The Privileges, Immunities, and Powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the Members thereof respectively shall be such as are from Time to Time defined by Act of the Parliament of *Canada*, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of *Great Britain and Ireland* and by the Members thereof.

First Session of the Parliament of Canada.

19. The Parliament of *Canada* shall be called together not later than Six Months after the Union.

Yearly Session of the Parliament of Canada.

20. There shall be a Session of the Parliament of *Canada* once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Parliament in one Session and its first Sitting in the next Session.

#### *The Senate.*

Number of Senators.

21. The Senate shall, subject to the Provisions of this Act, consist of Seventy-two Members, who shall be styled Senators.

Representation of Provinces in Senate.

22. In relation to the Constitution of the Senate *Canada* shall be deemed to consist of Three Divisions :

1. *Ontaria* ;

2. *Quebec* ;

3. The Maritime Provinces, *Nova Scotia* and *New Brunswick* ; which Three Divisions shall (subject to the Provisions of this Act) be equally represented in the Senate as follows : *Ontario* by Twenty-four Senators ; *Quebec* by Twenty-four Senators ; and the Maritime Provinces by Twenty-four Senators, Twelve thereof representing *Nova Scotia*, and Twelve thereof representing *New Brunswick*.

In the Case of *Quebec* each of the Twenty-four Senators representing that Province shall be appointed for One of the Twenty-four Electoral Divisions of *Lower Canada* specified in Schedule A to Chapter One of the Consolidated Statutes of *Canada*.

**23. The Qualifications of a Senator shall be as follows :**

Qualifica-  
tions of  
Senator.

- (1.) He shall be of the full Age of Thirty Years :
- (2.) He shall be either a natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the Parliament of *Great Britain*, or of the Parliament of the United Kingdom of *Great Britain* and *Ireland*, or of the Legislature of one of the Provinces of *Upper Canada*, *Lower Canada*, *Canada*, *Nova Scotia*, or *New Brunswick*, before the Union, or of the Parliament of *Canada* after the Union :
- (3.) He shall be legally or equitably seised as of Freehold for his own Use and Benefit of Lands or Tenements held in Free and Common Socage, or seised or possessed for his own Use and Benefit of Lands or Tenements hold in Francalleu or in Roture, within the Province for which he is appointed, of the Value of Four thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same :
- (4.) His Real and Personal Property shall be together worth Four thousand Dollars over and above his Debts and Liabilities :
- (5.) He shall be resident in the Province for which he is appointed :
- (6.) In the case of *Quebec* he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division.

**24. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of *Canada*, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator.**

Summons of  
Senator.

**25. Such Persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their Names shall be inserted in the Queen's Proclamation of Union.**

Summons of  
First Body  
of Senators.

**26. If at any Time on the Recommendation of the Governor General the Queen thinks fit to direct that Three or Six Members be added to the Senate, the Governor General may by Summons**

Addition of  
Senators in  
certain  
Cases.

to Three or Six qualified Persons (as the Case may be), representing equally the Three Divisions of *Canada*, add to the Senate accordingly.

Reduction  
of Senate to  
normal  
Number.

27. In case of such Addition being at any Time made, the Governor General shall not summon any Person to the Senate, except on a further like Direction by the Queen on the like Recommendation, until each of the Three Divisions of *Canada* is represented by Twenty-four Senators and no more.

Maximum  
Number of  
Senators.

28. The Number of Senators shall not at any Time exceed Seventy-eight.

Tenure of  
Place in  
Senate.

29. A Senator shall, subject to the Provisions of this Act, hold his Place in the Senate for Life.

Resignation  
of Place in  
Senate.

30. A Senator may by Writing under his Hand addressed to the Governor General resign his Place in the Senate, and thereupon the same shall be vacant.

Disqualifi-  
cation of  
Senators.

31. The Place of a Senator shall become vacant in any of the following Cases :

- (1.) If for Two consecutive Sessions of the Parliament he fails to give his Attendance in the Senate :
- (2.) If he takes an oath or makes a Declaration or Acknowledgment of Allegiance, Obedience, or Adherence to a Foreign Power, or does an Act whereby he becomes a Subject or Citizen, or entitled to the Rights or Privileges of a Subject or Citizen, of a Foreign Power :
- (3.) If he is adjudged Bankrupt or Insolvent, or applies for the Benefit of any Law relating to Insolvent Debtors, or becomes a public Defaulter :
- (4.) If he is attainted of Treason or convicted of Felony or of any infamous Crime :
- (5.) If he ceases to be qualified in respect of Property or of Residence ; provided, that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of *Canada* while holding an Office under that Government requiring his presence there.

Commons  
Vacancy  
Senate.

32. When a Vacancy happens in the Senate by Resignation, Death, or otherwise, the Governor General shall by Summons to a fit and qualified Person fill the Vacancy.

Qualifications  
as  
Qualifica-  
tions and  
vacancies  
Senate.

33. If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate.

Joint-  
ment of  
the  
te.

34. The Governor General may from Time to Time, by Instrument under the Great Seal of *Canada*, appoint a Senator to be

Speaker of the Senate, and may remove him and appoint another in his Stead.

35. Until the Parliament of *Canada* otherwise provides, the Presence of at least Fifteen Senators, including the Speaker, shall be necessary to constitute a Meeting of the Senate for the Exercise of its Powers. Quorum of Senate.

36. Questions arising in the Senate shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the Negative. Voting in Senate.

### *The House of Commons.*

37. The House of Commons shall, subject to the Provisions of this Act, consist of One hundred and eighty-one Members, of whom Eighty-two shall be elected for *Ontario*, Sixty-five for *Quebec*, Nineteen for *Nova Scotia*, and Fifteen for *New Brunswick*. Constitution of House of Commons in Canada.

38. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of *Canada*, summon and call together the House of Commons. Summoning of House of Commons.

39. A Senator shall not be capable of being elected or of sitting or voting as a Member of the House of Commons. Senators not to sit in House of Commons.

40. Until the Parliament of *Canada* otherwise provides, *Ontario*, *Quebec*, *Nova Scotia*, and *New Brunswick* shall, for the Purposes of the Election of Members to serve in the House of Commons, be divided into Electoral Districts as follows: Electoral Districts of the Four Provinces.

[Omitted.]

[Sections 41-43 are omitted. They relate to continuance of existing Electoral Laws, till otherwise provided.]

[Sections 44-49, which relate to Election of Speaker and Rules of the House, are also omitted.]

50. Every House of Commons shall continue for Five Years from the Day of the Return of the Writs for choosing the House (subject to be sooner dissolved by the Governor General), and no longer. Duration of House of Commons.

51. On the Completion of the Census in the Year One thousand eight hundred and seventy-one, and of each subsequent decennial Census, the Representation of the Four Provinces shall be readjusted by such Authority, in such Manner, and from such Decennial Readjustment of Representation.

Time, as the Parliament of *Canada* from Time to Time provides, subject and according to the following Rules :

- (1.) *Quebec* shall have the fixed Number of Sixty-five Members :
- (2.) There shall be assigned to each of the other Provinces such a Number of Members as will bear the same Proportion to the Number of its Population (ascertained at such Census) as the Number Sixty-five bears to the Number of the Population of *Quebec* (so ascertained) :
- (3.) In the computation of the Number of Members for a Province a fractional Part not exceeding One Half of the whole Number requisite for entitling the Province to a Member shall be disregarded ; but a fractional Part exceeding One Half of that Number shall be equivalent to the whole Number :
- (4.) On any such Readjustment the Number of Members for a Province shall not be reduced unless the proportion which the Number of the Population of the Province bore to the Number of the aggregate Population of *Canada* at the then last preceding Readjustment of the Number of Members for the Province is ascertained at the then latest Census to be diminished by One Twentieth Part or upwards :
- (5.) Such Readjustment shall not take effect until the Termination of the then existing Parliament.

Increase of  
Number of  
House of  
Commons.

52. The number of Members of the House of Commons may be from Time to Time increased by the Parliament of *Canada*, provided the proportionate Representation of the Provinces prescribed by this Act is not thereby disturbed.

*Money Votes ; Royal Assent.*

Appropriation  
and  
Tax Bills.

53. Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

Recommendation  
of  
Money  
Votes.

54. It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any Purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed.

Royal Assent  
to Bills,  
&c.

55. Where a Bill passed by the Houses of the Parliament is presented to the Governor General for the Queen's Assent, he shall declare, according to his Discretion, but subject to the Provisions of this Act and to Her Majesty's Instructions, either that he

assents thereto in the Queen's Name, or that he withholds the Queen's Assent, or that he reserves the Bill for the Signification of the Queen's Pleasure.

56. Where the Governor-General assents to a Bill in the Queen's Name, he shall by the first convenient Opportunity send an authentic Copy of the Act to One of Her Majesty's Principal Secretaries of State, and if the Queen in Council within Two Years after Receipt thereof by the Secretary of State thinks fit to disallow the Act, such Disallowance (with a Certificate of the Secretary of State of the Day on which the Act was received by him) being signified by the Governor General, by Speech or Message to each of the Houses of the Parliament or by Proclamation, shall annul the Act from and after the Day of such Signification.

Disallow-  
ance by  
Order in  
Council of  
Act as-  
sented to by  
Governor  
General.

57. A Bill reserved for the Signification of the Queen's Pleasure shall not have any Force unless and until, within Two Years from the Day on which it was presented to the Governor General for the Queen's Assent, the Governor General signifies, by Speech or Message to each of the Houses of the Parliament or by Proclamation, that it has received the Assent of the Queen in Council.

Significa-  
tion of  
Queen's  
Pleasure  
on Bill re-  
served.

An Entry of every such Speech, Message, or Proclamation shall be made in the Journal of each House, and a Duplicate thereof duly attested shall be delivered to the proper Officer to be kept among the Records of *Canada*.

## V.—PROVINCIAL CONSTITUTIONS.

### *Executive Power.*

58. For each Province there shall be an Officer, styled the Lieutenant Governor, appointed by the Governor General in Council by Instrument under the Great Seal of *Canada*.

Appoint-  
ment of  
Lieutenant  
Governors of  
Provinces.

59. A Lieutenant Governor shall hold Office during the Pleasure of the Governor General; but any Lieutenant Governor appointed after the Commencement of the First Session of the Parliament of *Canada* shall not be removeable within Five Years from his Appointment, except for Cause assigned, which shall be communicated to him in Writing within One Month after the Order for his Removal is made, and shall be communicated by Message to the Senate and to the House of Commons within One Week thereafter if the Parliament is then sitting, and if not then within One Week after the Commencement of the next Session of the Parliament.

Tenure of  
Office of  
Lieutenant  
Governor.

60. The Salaries of the Lieutenant Governors shall be fixed and provided by the Parliament of *Canada*.

Salaries of  
Lieutenant  
Governors.

Oaths, &c. of  
Lieutenant  
Governor.

61. Every Lieutenant Governor shall, before assuming the Duties of his Office, make and subscribe before the Governor General or some Person authorised by him Oaths of Allegiance and Office similar to those taken by the Governor General.

Application  
of Pro-  
visions re-  
ferring to  
Lieutenant  
Governor.

62. The Provisions of this Act referring to the Lieutenant Governor extend and apply to the Lieutenant Governor for the Time being of each Province, or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of the Province, by whatever Title he is designated.

Appoint-  
ment of  
Executive  
Officers for  
Ontario and  
Quebec.

63. The Executive Council of *Ontario* and of *Quebec* shall be composed of such Persons as the Lieutenant Governor from Time to Time thinks fit, and in the first instance of the following Officers, namely,—the Attorney General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, with in *Quebec* the Speaker of the Legislative Council and the Solicitor General.

Executive  
Government  
of Nova  
Scotia and  
New Bruns-  
wick.

64. The Constitution of the Executive Authority in each of the Provinces of *Nova Scotia* and *New Brunswick* shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act.

Powers to  
be exercised  
by Lieu-  
tenant Gov-  
ernor of  
*Ontario* or  
*Quebec* with  
Advice, or  
alone.

65. All Powers, Authorities, and Functions which under any Act of the Parliament of *Great Britain*, or of the Parliament of the United Kingdom of *Great Britain* and *Ireland*, or of the Legislature of *Upper Canada*, *Lower Canada*, or *Canada*, were or are before or at the Union vested in or exerciseable by the respective Governors or Lieutenant Governors of those Provinces, with the Advice or with the Advice and Consent of the respective Executive Councils thereof, or in conjunction with those Councils, or with any Number of Members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same are capable of being exercised after the Union in relation to the Government of *Ontario* and *Quebec* respectively, be vested in and shall or may be exercised by the Lieutenant Governor of *Ontario* and *Quebec* respectively, with the Advice or with the Advice and Consent of or in conjunction with the respective Executive Councils, or any Members thereof, or by the Lieutenant Governor individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of *Great Britain*, or of the Parliament of the United Kingdom of *Great Britain* and *Ireland*,) to be abolished or altered by the respective Legislatures of *Ontario* and *Quebec*.

66. The Provisions of this Act referring to the Lieutenant Governor in Council shall be construed as referring to the Lieutenant Governor of the Province acting by and with the Advice of the Executive Council thereof.

Application of Provisions referring to Lieutenant Governor in Council.

67. The Governor General in Council may from Time to Time appoint an Administrator to execute the Office and Functions of Lieutenant Governor during his Absence, Illness, or other Inability.

Administration in Absence, &c., of Lieutenant Governor.

68. Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the Seats of Government of the Provinces shall be as follows, namely,—of *Ontario*, the City of *Toronto*; of *Quebec*, the City of *Quebec*; of *Nova Scotia*, the City of *Halifax*; and of *New Brunswick*, the City of *Fredericton*.

Seats of Provincial Governments.

### *Legislative Power.*

#### 1.—ONTARIO.

69. There shall be a Legislature for *Ontario* consisting of the Lieutenant Governor and of One House, styled the Legislative Assembly of *Ontario*.

Legislature for Ontario.

70. The Legislative Assembly of *Ontario* shall be composed of Eighty-two Members, to be elected to represent the Eighty-two Electoral Districts set forth in the First Schedule to this Act.

Electoral Districts.

#### 2.—QUEBEC.

71. There shall be a Legislature for *Quebec* consisting of the Lieutenant Governor and of Two Houses, styled the Legislative Council of *Quebec* and the Legislative Assembly of *Quebec*.

Legislature for Quebec.

72. The Legislative Council of *Quebec* shall be composed of Twenty-four Members, to be appointed by the Lieutenant Governor, in the Queen's Name, by Instrument under the Great Seal of *Quebec*, one appointed to represent each of the Twenty-four Electoral Divisions of *Lower Canada* in this Act referred to, and each holding Office for the Term of his Life, unless the Legislature of *Quebec* otherwise provides under the Provisions of this Act.

Constitution of Legislative Council.

73. The Qualifications of the Legislative Councillors of *Quebec* shall be the same as those of the Senators for *Quebec*.

Qualification of Legislative Councillors.

74. The place of a Legislative Councillor of *Quebec* shall become vacant in the Cases, *mutatis mutandis*, in which the place of Senator becomes vacant.

Resignation, Disqualification, &c.



## Vacancies.

75. When a Vacancy happens in the Legislative Council of *Quebec* by Resignation, Death, or otherwise, the Lieutenant Governor, in the Queen's Name, by Instrument under the Great Seal of *Quebec*, shall appoint a fit and qualified Person to fill the Vacancy.

## Questions as to Vacancies, &amp;c.

76. If any Question arises respecting the Qualification of a Legislative Councillor of *Quebec*, or a Vacancy in the Legislative Council of *Quebec*, the same shall be heard and determined by the Legislative Council.

## Speaker of Legislative Council.

77. The Lieutenant Governor may from Time to Time, by Instrument under the Great Seal of *Quebec*, appoint a Member of the Legislative Council of *Quebec* to be Speaker thereof, and may remove him and appoint another in his Stead.

## Quorum of Legislative Council.

78. Until the Legislature of *Quebec* otherwise provides, the Presence of at least Ten Members of the Legislative Council, including the Speaker, shall be necessary to constitute a Meeting for the Exercise of its Powers.

## Voting in Legislative Council.

79. Questions arising in the Legislative Council of *Quebec* shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the Negative.

## Constitution of Legislative Assembly of Quebec.

80. The Legislative Assembly of *Quebec* shall be composed of Sixty-five Members, to be elected to represent the Sixty-five Electoral Divisions or Districts of *Lower Canada* in this Act referred to, subject to Alteration thereof by the Legislature of *Quebec*: Provided that it shall not be lawful to present to the Lieutenant Governor of *Quebec* for Assent any Bill for altering the Limits of any of the Electoral Divisions or Districts mentioned in the Second Schedule to this Act, unless the Second and Third Readings of such Bill have been passed in the Legislative Assembly with the Concurrence of the Majority of the Members representing all those Electoral Divisions or Districts, and the Assent shall not be given to such Bill unless an Address has been presented by the Legislative Assembly to the Lieutenant Governor stating that it has been so passed.

## 3.—ONTARIO AND QUEBEC.

## First Session of Legislatures.

81. The Legislatures of *Ontario* and *Quebec* respectively shall be called together not later than Six Months after the Union.

## Summoning of Legislative Assemblies.

82. The Lieutenant Governor of *Ontario* and of *Quebec* shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province.

83. Restriction on Election of Holders of Offices. [Omitted.]

84. Continuance of existing Election Laws. [Omitted.]

85. Every Legislative Assembly of *Ontario* and every Legislative Assembly of *Quebec* shall continue for Four Years from the Day of the Return of the Writs for choosing the same (subject nevertheless to either the Legislative Assembly of *Ontario* or the Legislative Assembly of *Quebec* being sooner dissolved by the Lieutenant Governor of the Province), and no longer.

Duration of  
Legislative  
Assemblies.

86. There shall be a Session of the Legislature of *Ontario* and of that of *Quebec* once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Legislature in each Province in one Session and its first Sitting in the next Session.

Yearly Ses-  
sion of  
Legislature.

87. The following Provisions of this Act respecting the House of Commons of *Canada* shall extend and apply to the Legislative Assemblies of *Ontario* and *Quebec*, that is to say,—the Provisions relating to the Election of a Speaker originally and on Vacancies, the Duties of the Speaker, the Absence of the Speaker, the Quorum, and the Mode of voting, as if those Provisions were here re-enacted and made applicable in Terms to each such Legislative Assembly.

Speaker,  
Quorum, &c.

#### 4.—NOVA SCOTIA AND NEW BRUNSWICK.

88. The Constitution of the Legislature of each of the Provinces of *Nova Scotia* and *New Brunswick* shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act; and the House of Assembly of *New Brunswick* existing at the passing of this Act shall, unless sooner dissolved, continue for the Period for which it was elected.

Constitu-  
tions of  
Legislatures  
of *Nova  
Scotia* and  
*New Bruns-  
wick*.

#### 5.—ONTARIO, QUEBEC, AND NOVA SCOTIA.

89. Each of the Lieutenant Governors of *Ontario*, *Quebec*, and *Nova Scotia* shall cause Writs to be issued for the First Election of Members of the Legislative Assembly thereof in such Form and by such Person as he thinks fit, and at such Time and addressed to such Returning Officer as the Governor General directs, and so that the First Election of Member of Assembly for any Electoral District or any Subdivision thereof shall be held at the same Time and at the same Places as the Election for a Member to serve in the House of Commons of *Canada* for that Electoral District.

First Elec-  
tions.

## 6.—THE FOUR PROVINCES.

Application  
to Legisla-  
tures of  
Provisions  
respecting  
Money  
Votes, &c.

90. The following Provisions of this Act respecting the Parliament of *Canada*, namely,—the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved,—shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for *Canada*.

## VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

*Powers of the Parliament.*

Legislative  
Authority of  
Parliament  
of Canada.

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of *Canada*, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of *Canada* extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military, and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of *Canada*.
9. Beacons, Buoys, Lighthouses, and *Sable Island*.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any *British* or Foreign Country or between Two Provinces.

14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. *Indians*, and Lands reserved for the *Indians*.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

*Exclusive Powers of Provincial Legislatures.*

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,—

Subjects of  
exclusive  
Provincial  
Legislation.

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.

6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes :—
  - a. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province :
    - . Lines of Steam Ships between the Province and any *British* or Foreign Country :
    - . Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of *Canada* to be for the general Advantage of *Canada* or for the Advantage of Two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.

#### *Education.*

Legislation  
respecting  
Education.

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions :—

- (1.) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union :
- (2.) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in *Upper Canada* on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissident Schools of the Queen's Protestant and Roman Catholic Subjects in *Quebec* :
- (3.) Where in any Province a System of Separate or Dissident Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education :
- (4.) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of *Canada* may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section.

*Uniformity of Laws in Ontario, Nova Scotia, and New Brunswick.*

94. Notwithstanding anything in this Act, the Parliament of *Canada* may make Provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in *Ontario, Nova Scotia, and New Brunswick*, and of the Procedure of all or any of the Courts in those Three Provinces, and from and after the passing of any Act in that Behalf the Power of the Parliament of *Canada* to make Laws in relation to any Matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted ; but any Act of the Parliament of *Canada* making Provision for such Uniformity shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof.

Legislation  
for Uni-  
formity of  
Laws in  
Three  
Provinces.

*Agriculture and Immigration.*

Concurrent  
Powers of  
Legislation  
respecting  
Agriculture,  
&c.

95. In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the Parliament of *Canada* may from Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any Law of the Legislature of a Province relative to Agriculture or to Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of *Canada*.

## VII.—JUDICATURE.

Appoint-  
ment of  
Judges.

96. The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in *Nova Scotia* and *New Brunswick*.

Selection of  
Judges in  
Ontario, &c.

97. Until the Laws relative to Property and Civil Rights in *Ontario*, *Nova Scotia*, and *New Brunswick*, and the Procedure of the Courts in those Provinces, are made uniform, the Judges of the Courts of those Provinces appointed by the Governor General shall be selected from the respective Bars of those Provinces.

Selection of  
Judges in  
Quebec.

98. The Judges of the Courts of *Quebec* shall be selected from the Bar of that Province.

Tenure of  
Office of  
Judges of  
Superior  
Courts.

99. The Judges of the Superior Courts shall hold Office during good Behaviour, but shall be removeable by the Governor General on Address of the Senate and House of Commons.

Salaries, &c.  
of Judges.

100. The Salaries, Allowances, and Pensions of the Judges of the Superior, District, and County Courts (except the Courts of Probate in *Nova Scotia* and *New Brunswick*), and of the Admiralty Courts in Cases where the Judges thereof are for the Time being paid by Salary, shall be fixed and provided by the Parliament of *Canada*.

General  
Court of  
Appeal, &c.

101. The Parliament of *Canada* may, notwithstanding anything in this Act, from Time to Time provide for the Constitution, Maintenance, and Organisation of a General Court of Appeal for *Canada*, and for the Establishment of any additional Courts for the better Administration of the Laws of *Canada*.

## VIII.—REVENUES; DEBTS; ASSETS; TAXATION.

Creation of  
Consoli-  
dated Re-  
venue Fund.

102. All Duties and Revenues over which the respective Legislatures of *Canada*, *Nova Scotia*, and *New Brunswick* before and at the Union had and have Power of Appropriation, except such

Portions thereof as are by this Act reserved to the respective Legislatures of the Provinces, or are raised by them in accordance with the special Powers conferred on them by this Act, shall form One Consolidated Revenue Fund, to be appropriated for the Public Service of *Canada* in the Manner and subject to the Charges in this Act provided.

103. The Consolidated Revenue Fund of *Canada* shall be permanently charged with the Costs, Charges, and Expenses incident to the Collection, Management, and Receipt thereof, and the same shall form the First Charge thereon, subject to be reviewed and audited in such Manner as shall be ordered by the Governor General in Council until the Parliament otherwise provides.

Expenses of  
Collection,  
&c.

104. The annual Interest of the Public Debts of the several Provinces of *Canada*, *Nova Scotia*, and *New Brunswick* at the Union shall form the Second Charge on the Consolidated Revenue Fund of *Canada*.

Interest of  
Provincial  
Public  
Debts.

105. Unless altered by the Parliament of *Canada*, the Salary of the Governor General shall be Ten thousand Pounds Sterling Money of the United Kingdom of *Great Britain* and *Ireland*, payable out of the Consolidated Revenue Fund of *Canada*, and the same shall form the Third Charge thereon.

Salary of  
Governor  
General.

106. Subject to the several Payments by this Act charged on the Consolidated Revenue Fund of *Canada*, the same shall be appropriated by the Parliament of *Canada* for the Public Service.

Appropriation from  
Time to  
Time.

107. All Stocks, Cash, Banker's Balances, and Securities for Money belonging to each Province at the Time of the Union, except as in this Act mentioned, shall be the property of *Canada*, and shall be taken in Reduction of the Amount of the respective Debts of the Provinces at the Union.

Transfer of  
Stocks, &c.

108. The Public Works and Property of each Province, enumerated in the Third Schedule to this Act, shall be the Property of *Canada*.

Transfer of  
Property in  
Schedule.

109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of *Canada*, *Nova Scotia*, and *New Brunswick* at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of *Ontario*, *Quebec*, *Nova Scotia*, and *New Brunswick* in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.

Property in  
Lands,  
Mines, &c.

110. All Assets connected with such Portions of the Public Debt of each Province as are assumed by that Province shall belong to that Province.

Assets connected with  
Provincial  
Debts.



Canada to  
be liable to  
Provincial  
Debts.

111. *Canada* shall be liable for the Debts and Liabilities of each Province existing at the Union.

[Sections 112-116 relate to special provisions about existing provincial debts and are omitted.]

Provincial  
Public Pro-  
perty.

117. The several Provinces shall retain all their respective Public Property not otherwise disposed of in this Act, subject to the Right of *Canada* to assume any Lands or Public Property required for Fortifications or for the Defence of the Country.

Grants to  
Provinces.

118. The following Sums shall be paid yearly by *Canada* to the several Provinces for the support of their Governments and Legislatures :

	Dollars.
<i>Ontario</i> . . . . .	Eighty thousand.
<i>Quebec</i> . . . . .	Seventy thousand.
<i>Nova Scotia</i> . . . . .	Sixty thousand.
<i>New Brunswick</i> . . . . .	Fifty thousand.

Two hundred and sixty thousand ;

and an annual Grant in aid of each Province shall be made, equal to Eighty Cents *per Head* of the Population as ascertained by the Census of One thousand eight hundred and sixty-one, and in the Case of *Nova Scotia* and *New Brunswick*, by each subsequent Decennial Census until the Population of each of those Two Provinces amounts to Four hundred thousand Souls, at which Rate such Grant shall thereafter remain. Such Grants shall be in full Settlement of all future Demands on *Canada*, and shall be paid half-yearly in advance to each Province ; but the Government of *Canada* shall deduct from such grants, as against any Province, all Sums chargeable as Interest on the Public Debt of that Province in excess of the several Amounts stipulated in this Act.

119. Further Grant to *New Brunswick* for ten years. [*Omitted.*]

Form of  
Payments.

120. All Payments to be made under this Act, or in discharge of Liabilities created under any Act of the Provinces of *Canada*, *Nova Scotia*, and *New Brunswick* respectively, and assumed by *Canada*, shall, until the Parliament of *Canada* otherwise directs, be made in such Form and Manner as may from Time to Time be ordered by the Governor General in Council.

Canadian  
Manufac-  
tures, &c.

121. All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.

Continu-  
ance of Cus-  
toms and  
Excise  
Laws.

122. The Customs and Excise Laws of each Province shall, subject to the Provisions of this Act, continue in force until altered by the Parliament of *Canada*.

123. Where Customs Duties are, at the Union, leviable on any Goods, Wares, or Merchandises in any two Provinces, those Goods, Wares, and Merchandises may, from and after the Union, be imported from one of those Provinces into the other of them on Proof of Payment of the Customs Duty leviable thereon in the Province of Exportation, and on payment of such further Amount (if any) of Customs Duty as is leviable thereon in the Province of Importation.

Exportation and Importation as between Two Provinces.

124. Lumber Dues in New Brunswick. [Omitted.]

125. No Lands or Property belonging to *Canada* or any Province shall be liable to Taxation.

Exemption of Public Lands, &c.

126. Such Portions of the Duties and Revenues over which the respective Legislatures of *Canada*, *Nova Scotia*, *New Brunswick* had before the Union Power of Appropriation as are by this Act reserved to the respective Governments or Legislatures of the Provinces, and all Duties and Revenues raised by them in accordance with the special Powers conferred upon them by this Act, shall in each Province form One Consolidated Revenue Fund to be appropriated for the Public Service of the Province.

Provincial Consolidated Revenue Fund.

#### IX.—MISCELLANEOUS PROVISIONS.

##### *General.*

127. As to Legislative Councillors of Provinces becoming Senators. [Omitted.]

128. Every Member of the Senate or House of Commons of *Canada* shall before taking his Seat therein take and subscribe before the Governor General or some Person authorized by him, and every Member of a Legislative Council or Legislative Assembly of any Province shall before taking his Seat therein take and subscribe before the Lieutenant Governor of the Province or some Person authorised by him, the Oath of Allegiance contained in the Fifth Schedule to this Act; and every Member of the Senate of *Canada* and every Member of the Legislative Council of *Quebec* shall also, before taking his Seat therein, take and subscribe before the Governor General, or some Person authorized by him, the Declaration of Qualification contained in the same Schedule.

Oath of Allegiance, &c.

129. Except as otherwise provided by this Act, all Laws in force in *Canada*, *Nova Scotia*, or *New Brunswick* at the Union, and all Courts of Civil and Criminal Jurisdiction, and all legal Commissions, Powers, and Authorities, and all Officers, Judicial, Administrative, and Ministerial, existing therein at the Union, shall continue in *Ontario*, *Quebec*, *Nova Scotia*, and *New Brunswick*

Continuance of existing Laws, Courts, Officers, &c.

respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of *Great Britain* or of the Parliament of the United Kingdom of *Great Britain* and *Ireland*), to be repealed, abolished, or altered by the Parliament of *Canada*, or by the Legislature of the respective Province, according to the Authority of the Parliament or of that Legislature under this Act.

130. Transfer of Officers to Canada. [Omitted.]

131. Appointment of New Officers. [Omitted.]

Treaty Obligations.

132. The Parliament and Government of *Canada* shall have all Powers necessary or proper for performing the Obligations of *Canada* or of any Province thereof, as Part of the *British Empire*, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.

Use of English and French Languages.

133. Either the *English* or the *French* Language may be used by any Person in the Debates of the Houses of the Parliament of *Canada* and of the Houses of the Legislature of *Quebec*; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of *Canada* established under this Act, and in or from all or any of the Courts of *Quebec*.

The Acts of the Parliament of *Canada* and of the Legislature of *Quebec* shall be printed and published in both those Languages.

#### *Ontario and Quebec.*

Appointment of Executive Officers for Ontario and Quebec.

134. Until the Legislature of *Ontario* or of *Quebec* otherwise provides, the Lieutenant Governors of *Ontario* and *Quebec* may each appoint under the Great Seal of the Province the following Officers, to hold Office during Pleasure, that is to say,—the Attorney General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, and in the Case of *Quebec* the Solicitor-General, and may, by Order of the Lieutenant Governor in Council, from Time to Time prescribe the Duties of those Officers, and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof, and may also appoint other and additional Officers to hold Office during Pleasure, and may from Time to Time prescribe the Duties of those Officers, and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof.

135. Until the Legislature of *Ontario* or *Quebec* otherwise provides, all Rights, Powers, Duties, Functions, Responsibilities, or Authorities at the passing of this Act vested in or imposed on the Attorney General, Solicitor General, Secretary and Registrar of the Province of *Canada*, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works, and Minister of Agriculture and Receiver General, by any Law, Statute, or Ordinance of *Upper Canada*, *Lower Canada*, or *Canada*, and not repugnant to this Act, shall be vested in or imposed on any Officer to be appointed by the Lieutenant Governor for the Discharge of the same or any of them; and the Commissioner of Agriculture and Public Works shall perform the Duties and Functions of the Office of Minister of Agriculture at the passing of this Act imposed by the Law of the Province of *Canada*, as well as those of the Commissioner of Public Works.

Powers,  
Duties, &c.,  
of Executive  
Officers.

[Sections 136 to 145 are of temporary interest, and are omitted]

#### XI.—ADMISSION OF OTHER COLONIES.

146. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of *Canada*, and from the Houses of the respective Legislatures of the Colonies or Provinces of *Newfoundland*, *Prince Edward Island*, and *British Columbia*, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of *Canada* to admit *Rupert's Land* and the North-western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act; and the Provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of *Great Britain* and *Ireland*.

Power to  
admit New-  
foundland,  
&c., into the  
Union.

147. In case of the Admission of *Newfoundland* and *Prince Edward Island*, or either of them, each shall be entitled to a Representation in the Senate of *Canada* of Four Members, and (notwithstanding anything in this Act) in case of the Admission of *Newfoundland* the normal Number of Senators shall be Seventy-six and their maximum Number shall be Eighty-two; but *Prince Edward Island* when admitted shall be deemed to be comprised in the third of the Three Divisions into which *Canada* is, in relation to the Constitution of the Senate, divided by this Act, and accordingly, after the Admission of *Prince Edward Island*, whether *Newfoundland* is admitted or not, the Representation of *Nova Scotia* and *New Brunswick* in the Senate shall, as Vacancies occur, be

As to  
Representa-  
tion of New-  
foundland  
and Prince  
Edward  
Island in  
Senate.

reduced from Twelve to Ten Members respectively, and the Representation of each of those Provinces shall not be increased at any Time beyond Ten, except under the Provisions of this Act for the Appointment of Three or Six additional Senators under the Direction of the Queen.

### THE THIRD SCHEDULE.

*Provincial Public Works and Property to be the Property of Canada.*

1. Canals, with Lands and Water Power connected therewith.
2. Public Harbours.
3. Lighthouses and Piers, and Sable Island.
4. Steamboats, Dredges, and Public Vessels.
5. Rivers and Lake Improvements.
6. Railways and Railway Stocks, Mortgages, and other Debts due by Railway Companies.
7. Military Roads.
8. Custom Houses, Post Offices, and all other Public Buildings, except such as the Government of Canada appropriate for the Use of the Provincial Legislatures and Governments.
9. Property transferred by the Imperial Government, and known as Ordnance Property.
10. Armouries, Drill Sheds, Military Clothing, and Munitions of War, and Lands set apart for general Public Purposes.

### THE FIFTH SCHEDULE.

#### OATH OF ALLEGIANCE.

I, *A. B.*, do swear, That I will be faithful and bear true Allegiance to Her Majesty Queen Victoria.

NOTE.—*The Name of the King or Queen of the United Kingdom of Great Britain and Ireland for the Time being is to be substituted from Time to Time, with proper Terms of Reference thereto.*

[The other Schedules are omitted.]

## APPENDIX II

### 63 & 64 VICT. C. 12—COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT

#### C A P. XII.

An Act to constitute the Commonwealth of Australia.

[9th July 1900.]

WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established :

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the Commonwealth of Australia Constitution Act. Short title.

2. The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom. Act to extend to the Queen's successors.

3. It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation that, on and after a day therein appointed, not being later than one year after the passing of this Act, the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, and also, if Her Majesty is satisfied that the people of Western Australia have agreed thereto, of Western Australia, shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia. But Proclamation of Commonwealth.

the Queen may, at any time after the proclamation, appoint a Governor General for the Commonwealth.

Commence-  
ment of Act.

4. The Commonwealth shall be established, and the Constitution of the Commonwealth shall take effect, on and after the day so appointed. But the Parliaments of the several colonies may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had taken effect at the passing of this Act.

Operation  
of the con-  
stitution  
and laws.

5. This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.

Definitions.

6. "The Commonwealth" shall mean the Commonwealth of Australia as established under this Act.

"The States" shall mean such of the colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the northern territory of South Australia, as for the time being are parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as States; and each of such parts of the Commonwealth shall be called "a State."

"Original States" shall mean such States as are parts of the Commonwealth at its establishment.

Repeal of  
Federal  
Council Act.  
48 & 49 Vict.  
c. 60.

7. The Federal Council of Australasia Act, 1885, is hereby repealed, but so as not to affect any laws passed by the Federal Council of Australasia and in force at the establishment of the Commonwealth.

Any such law may be repealed as to any State by the Parliament of the Commonwealth, or as to any colony not being a State by the Parliament thereof.

Application  
of Colonial  
Boundaries  
Act.  
58 & 59 Vict.  
c. 24.

8. After the passing of this Act the Colonial Boundaries Act, 1895, shall not apply to any colony which becomes a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing colony for the purposes of that Act.

9. The Constitution of the Commonwealth shall be as follows:—

## THE CONSTITUTION.

This Constitution is divided as follows :—

## Chapter I. The Parliament :

Part i. General :

Part ii. The Senate :

Part iii. The House of Representatives :

Part iv. Both Houses of the Parliament :

Part v. Powers of the Parliament :

## Chapter II. The Executive Government :

## Chapter III. The Judicature :

## Chapter IV. Finance and Trade :

## Chapter V. The States :

## Chapter VI. New States :

## Chapter VII. Miscellaneous :

## Chapter VIII. Alteration of the Constitution.

The Schedule.

## CHAPTER I.

## THE PARLIAMENT.

*Part I.—General.*

1. The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives, and which is hereinafter called "The Parliament," or "The Parliament of the Commonwealth."

Legislative  
power

2. A Governor General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.

Governor  
General.

3. There shall be payable to the Queen out of the Consolidated Revenue fund of the Commonwealth, for the salary of the Governor General, an annual sum which, until the Parliament otherwise provides, shall be ten thousand pounds.

Salary of  
Governor  
General.

The salary of a Governor General shall not be altered during his continuance in office.

4. The provisions of this Constitution relating to the Governor General extend and apply to the Governor General for the time being, or such person as the Queen may appoint to administer the Government of the Commonwealth ; but no such person shall be

Provisions  
relating to  
Governor  
General.



entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth.

Sessions of  
Parliament.  
Prorogation  
and dissolution.

5. The Governor General may appoint such times for holding the sessions of the Parliament as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue the Parliament, and may in like manner dissolve the House of Representatives.

Summoning  
Parliament.

After any general election the Parliament shall be summoned to meet not later than thirty days after the day appointed for the return of the writs.

First session

The Parliament shall be summoned to meet not later than six months after the establishment of the Commonwealth.

Yearly  
session of  
Parliament.

6. There shall be a session of the Parliament once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.

### *Part II.—The Senate.*

The Senate.

7. The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate.

But until the Parliament of the Commonwealth otherwise provides, the Parliament of the State of Queensland, if that State be an Original State, may make laws dividing the State into divisions and determining the number of senators to be chosen for each division, and in the absence of such provision the State shall be one electorate.

Until the Parliament otherwise provides there shall be six senators for each Original State. The Parliament may make laws increasing or diminishing the number of senators for each State, but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators.

The senators shall be chosen for a term of six years, and the names of the senators chosen for each State shall be certified by the Governor to the Governor General.

Qualifica-  
tion of  
electors.

8. The qualification of electors of senators shall be in each State that which is prescribed by this Constitution, or by the Parliament, as the qualification for electors of members of the House of Representatives; but in the choosing of senators each elector shall vote only once.

Method of  
election of  
senators.

9. The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method

shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws prescribing the method of choosing the senators for that State.

The Parliament of a State may make laws for determining the times and places of election of senators for the State.

Times and places.

10. Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State, for the time being, relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections of senators for the State.

Application of State laws.

11. The Senate may proceed to the despatch of business, notwithstanding the failure of any State to provide for its representation in the Senate.

Failure to choose senators.

12. The Governor of any State may cause writs to be issued for elections of senators for the State. In case of the dissolution of the Senate the writs shall be issued within ten days from the proclamation of such dissolution.

Issue of writs.

13. As soon as may be after the Senate first meets, and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable; and the places of the senators of the first class shall become vacant at the expiration of the third year, and the places of those of the second class at the expiration of the sixth year, from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of six years from the beginning of their term of service.

Rotation of senators.

The election to fill vacant places shall be made in the year at the expiration of which the places are to become vacant.

For the purposes of this section the term of service of a senator shall be taken to begin on the first day of January following the day of his election, except in the cases of the first election and of the election next after any dissolution of the Senate, when it shall be taken to begin on the first day of January preceding the day of his election.

14. Whenever the number of senators for a State is increased or diminished, the Parliament of the Commonwealth may make such provision for the vacating of the places of senators for the State as it deems necessary to maintain regularity in the rotation.

Further provision for rotation.

15. If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen shall, sitting and voting together, choose a person to hold the place until the expiration of the term, or

Casual vacancies.

until the election of a successor as hereinafter provided, whichever first happens. But if the Houses of Parliament of the State are not in session at the time when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days after the beginning of the next session of the Parliament of the State, or until the election of a successor, whichever first happens.

At the next general election of members of the House of Representatives, or at the next election of senators for the State, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term.

The name of any senator so chosen or appointed shall be certified by the Governor of the State to the Governor General.

Qualifica-  
tions of  
senators.

16. The qualifications of a senator shall be the same as those of a member of the House of Representatives.

Election of  
President.

17. The Senate shall, before proceeding to the despatch of any other business, choose a senator to be the President of the Senate; and as often as the office of President becomes vacant the Senate shall again choose a senator to be the President.

The President shall cease to hold his office if he ceases to be a senator. He may be removed from office by a vote of the Senate, or he may resign his office or his seat by writing addressed to the Governor General.

Absence of  
President.

18. Before or during any absence of the President, the Senate may choose a senator to perform his duties in his absence.

Resignation  
of senator.

19. A senator may, by writing addressed to the President, or to the Governor General if there is no President or if the President is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

Vacancy by  
absence.

20. The place of a senator shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the Senate, fails to attend the Senate.

Vacancy to  
be notified.

21. Whenever a vacancy happens in the Senate, the President, or if there is no President or if the President is absent from the Commonwealth the Governor General, shall notify the same to the Governor of the State in the representation of which the vacancy has happened.

Quorum.

22. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

23. Questions arising in the Senate shall be determined by a majority of votes, and each senator shall have one vote. The President shall in all cases be entitled to a vote; and when the votes are equal the question shall pass in the negative.

Voting in  
Senate.

*Part III.—The House of Representatives.*

24. The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

Constitu-  
tion of  
House of  
Representa-  
tives:

The number of members chosen in the several States shall be in proportion to the respective numbers of their people, and shall, until the Parliament otherwise provides, be determined, whenever necessary, in the following manner:—

(i.) A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators:

(ii.) The number of members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.

But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

25. For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.

Provision as  
to races  
disqualified  
from voting.

26. Notwithstanding anything in section twenty-four, the number of members to be chosen in each State at the first election shall be as follows:—

Representa-  
tives in first  
Parliament.

New South Wales	.	.	.	twenty-three;
Victoria	.	.	.	twenty;
Queensland	.	.	.	eight;
South Australia	.	.	.	six;
Tasmania	.	.	.	five;

Provided that if Western Australia is an Original State, the numbers shall be as follows:—

New South Wales	.	.	.	twenty-six;
Victoria	.	.	.	twenty-three;

Queensland . . . . .	nine ;
South Australia . . . . .	seven ;
Western Australia . . . . .	five ;
Tasmania . . . . .	five.

**Alteration of number of members.** 27. Subject to this Constitution, the Parliament may make laws for increasing or diminishing the number of the members of the House of Representatives.

**Duration of House of Representatives.** 28. Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor General.

**Electoral divisions.** 29. Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different States.

In the absence of other provision, each State shall be one electorate.

**Qualification of electors.** 30. Until the Parliament otherwise provides, the qualification of electors of members of the House of Representatives shall be in each State that which is prescribed by the law of the State as the qualification of electors of the more numerous House of Parliament of the State; but in the choosing of members each elector shall vote only once.

**Application of State laws.** 31. Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State for the time being relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections in the State of members of the House of Representatives.

**Writs for general election.** 32. The Governor General in Council may cause writs to be issued for general elections of members of the House of Representatives.

After the first general election, the writs shall be issued within ten days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof.

**Writs for vacancies.** 33. Whenever a vacancy happens in the House of Representatives, the Speaker shall issue his writ for the election of a new member, or if there is no Speaker or if he is absent from the Commonwealth the Governor General in Council may issue the writ.

34. Until the Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows:—

Qualifications of members.

(i.) He must be of the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth as existing at the time when he is chosen:

(ii.) He must be a subject of the Queen, either natural-born or for at least five years naturalised under a law of the United Kingdom, or of a Colony which has become or becomes a State, or of the Commonwealth, or of a State.

35. The House of Representatives shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker.

Election of Speaker.

The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing addressed to the Governor General.

36. Before or during any absence of the Speaker, the House of Representatives may choose a member to perform his duties in his absence.

Absence of Speaker.

37. A member may by writing addressed to the Speaker, or to the Governor General if there is no Speaker or if the Speaker is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

Resignation of member.

38. The place of a member shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the House, fails to attend the House.

Vacancy by absence.

39. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the members of the House of Representatives shall be necessary to constitute a meeting of the House for the exercise of its powers.

Quorum.

40. Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.

Voting in House of Representatives.

*Part IV.—Both Houses of the Parliament.*

Right of  
electors of  
States.

41. No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

Oath or affir-  
mation of  
allegiance.

42. Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution.

Member of  
one House  
ineligible  
for other.

43. A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House.

Disqualifi-  
cation.

44. Any person who—

- (i.) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power : or
- (ii.) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer : or
- (iii.) Is an undischarged bankrupt or insolvent : or
- (iv.) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth : or
- (v.) Has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons :

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

But sub-section iv. does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

45. If a senator or a member of the House of Representatives—

- (i.) Becomes subject to any of the disabilities mentioned in the last preceding section: or
- (ii.) Takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors: or
- (iii.) Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State:

Vacancy on happening of disqualification.

his place shall thereupon become vacant.

46. Until the Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any court of competent jurisdiction.

Penalty for sitting when disqualified.

47. Until the Parliament otherwise provides, any question respecting the qualification of a senator or of a member of the House of Representatives, or respecting a vacancy in either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises.

Disputed elections.

48. Until the Parliament otherwise provides, each senator and each member of the House of Representatives shall receive an allowance of four hundred pounds a year, to be reckoned from the day on which he takes his seat.

Allowance to members.

49. The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

Privileges, &c., of Houses.

50. Each House of the Parliament may make rules and orders with respect to—

Rules and orders.

- (i.) The mode in which its powers, privileges, and immunities may be exercised and upheld:
- (ii.) The order and conduct of its business and proceedings either separately or jointly with the other House.

#### *Part V.—Powers of the Parliament.*

51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:—

Legislative powers of the Parliament.



- (i.) Trade and commerce with other countries, and among the States :
- (ii.) Taxation ; but so as not to discriminate between States or parts of States :
- (iii.) Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth :
- (iv.) Borrowing money on the public credit of the Commonwealth :
- (v.) Postal, telegraphic, telephonic, and other like services :
- (vi.) The naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth :
- (vii.) Lighthouses, lightships, beacons and buoys :
- (viii.) Astronomical and meteorological observations :
- (ix.) Quarantine :
- (x.) Fisheries in Australian waters beyond territorial limits :
- (xi.) Census and statistics :
- (xii.) Currency, coinage, and legal tender :
- (xiii.) Banking, other than State banking ; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money :
- (xiv.) Insurance, other than State insurance ; also State insurance extending beyond the limits of the State concerned :
- (xv.) Weights and measures :
- (xvi.) Bills of exchange and promissory notes :
- (xvii.) Bankruptcy and insolvency :
- (xviii.) Copyrights, patents of inventions and designs, and trade marks :
- (xix.) Naturalization and aliens :
- (xx.) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth :
- (xxi.) Marriage :
- (xxii.) Divorce and matrimonial causes ; and in relation thereto, parental rights, and the custody and guardianship of infants :
- (xxiii.) Invalid and old-age pensions :
- (xxiv.) The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States :
- (xxv.) The recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States :

- (xxvi.) The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws :
- (xxvii.) Immigration and emigration :
- (xxviii.) The influx of criminals :
- (xxix.) External affairs :
- (xxx.) The relations of the Commonwealth with the islands of the Pacific :
- (xxxi.) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws :
- (xxxii.) The control of railways with respect to transport for the naval and military purposes of the Commonwealth :
- (xxxiii.) The acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State :
- (xxxiv.) Railway construction and extension in any State with the consent of that State :
- (xxxv.) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State :
- (xxxvi.) Matters in respect of which this Constitution makes provision until the Parliament otherwise provides :
- (xxxvii.) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law :
- (xxxviii.) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia :
- (xxxix.) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or office of the Commonwealth.

52. The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to—

Exclusive powers of the Parliament.

- (i.) The seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes :

- (ii.) Matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government of the Commonwealth :
- (iii.) Other matters declared by this Constitution to be within the exclusive power of the Parliament.

Powers of  
the Houses  
in respect of  
legislation.

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

Appropriation  
Bills.

54. The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

Tax Bill.

55. Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only ; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

Recommendation  
of money  
votes.

56. A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor General to the House in which the proposal originated.

57. If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

Disagreement  
between the  
Houses.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor General may convene a joint sitting of the members of the Senate and of the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor General for the Queen's assent.

58. When a proposed law passed by both Houses of the Parliament is presented to the Governor General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.

Royal assent  
to Bills.

The Governor General may return to the house in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.

Recommendations by  
Governor  
General.

59. The Queen may disallow any law within one year from the Governor General's assent, and such disallowance on being made

Disallowance by the  
Queen.

known by the Governor General by speech or message to each of the Houses of the Parliament, or by Proclamation, shall annul the law from the day when the disallowance is so made known.

Significa-  
tion of  
Queen's  
pleasure  
on Bills  
reserved.

60. A proposed law reserved for the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor General for the Queen's assent the Governor General makes known, by speech or message to each of the Houses of the Parliament, or by Proclamation, that it has received the Queen's assent.

## CHAPTER II.

### THE EXECUTIVE GOVERNMENT.

Executive  
power.

61. The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

Federal  
Executive  
Council.

62. There shall be a Federal Executive Council to advise the Governor General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor General and sworn as Executive Councillors, and shall hold office during his pleasure.

Provisions  
referring to  
Governor  
General.

63. The provisions of this Constitution referring to the Governor General in Council shall be construed as referring to the Governor General acting with the advice of the Federal Executive Council.

Ministers of  
State.

64. The Governor General may appoint officers to administer such departments of State of the Commonwealth as the Governor General in Council may establish.

Such officers shall hold office during the pleasure of the Governor General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.

Ministers to  
sit in Parlia-  
ment.

After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives.

Number of  
Ministers.

65. Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor General directs.

66. There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.

Salaries of Ministers.

67. Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor General in Council, unless the appointment is delegated by the Governor General in Council, or by a law of the Commonwealth to some other authority.

Appointment of civil servants.

68. The command in chief of the naval and military forces of the Commonwealth is vested in the Governor General as the Queen's representative.

Command of naval and military forces.

69. On a date or dates to be proclaimed by the Governor General after the establishment of the Commonwealth the following departments of the public service in each State shall become transferred to the Commonwealth:—

Transfer of certain departments.

Posts, telegraphs, and telephones :

Naval and military defence :

Lighthouses, lightships, beacons, and buoys :

Quarantine.

But the departments of customs and of excise in each State shall become transferred to the Commonwealth on its establishment.

70. In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a Colony, or in the Governor of a Colony with the advice of his Executive Council, or in any authority of a Colony, shall vest in the Governor General, or in the Governor General in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.

Certain powers of Governors to vest in Governor General.

## CHAPTER III.

### THE JUDICATURE.

71. The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes.

Judicial power and Courts.

Judges' ap-  
pointment,  
tenure, and  
remunera-  
tion.

72. The Justices of the High Court and of the other courts created by the Parliament—

- (i.) Shall be appointed by the Governor General in Council:
- (ii.) Shall not be removed except by the Governor General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity:
- (iii.) Shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office:

Appellate  
jurisdiction  
of High  
Court.

73. The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences—

- (i.) Of any Justice or Justices exercising the original jurisdiction of the High Court:
- (ii.) Of any other federal court, or court exercising federal jurisdiction; or of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council:
- (iii.) Of the Inter-State Commission, but as to questions of law only:

and the judgment of the High Court in all such cases shall be final and conclusive.

But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.

Until the Parliament otherwise provides, the conditions of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court.

Appeal to  
Queen in  
Council.

74. No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits *inter se* of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits *inter se* of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.

The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.

Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor General for Her Majesty's pleasure.

75. In all matters—

- (i.) Arising under any treaty:
- (ii.) Affecting consuls or other representatives of other countries:
- (iii.) In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party:
- (iv.) Between States, or between residents of different States, or between a State and a resident of another State.
- (v.) In which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth:

Original  
jurisdiction  
of High  
Court.

the High Court shall have original jurisdiction.

76. The Parliament may make laws conferring original jurisdiction on the High Court in any matter—

- (i.) Arising under this Constitution, or involving its interpretation:
- (ii.) Arising under any laws made by the Parliament:
- (iii.) Of Admiralty and maritime jurisdiction:
- (iv.) Relating to the same subject-matter claimed under the laws of different States.

Additional  
original  
jurisdiction.

77. With respect to any of the matters mentioned in the last two sections the Parliament may make laws—

- (i.) Defining the jurisdiction of any federal court other than the High Court:
- (ii.) Defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is invested in the courts of the States:
- (iii.) Investing any court of a State with federal jurisdiction.

Power to  
define jurisdiction.

78. The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power.

Proceedings  
against  
Commonwealth  
or  
State.

79. The federal jurisdiction of any court may be exercised by such number of judges as the Parliament prescribes.

Number of  
judges.

80. The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be

Trial by  
jury.



held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes.

#### CHAPTER IV.

##### FINANCE AND TRADE.

Consolidated Revenue Fund.

81. All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.

Expenditure charged thereon.

82. The costs, charges, and expenses incident to the collection, management, and receipt of the Consolidated Revenue Fund shall form the first charge thereon; and the revenue of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth.

Money to be appropriated by law.

83. No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

But until the expiration of one month after the first meeting of the Parliament the Governor General in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department transferred to the Commonwealth and for the holding of the first elections for the Parliament.

Transfer of officers.

84. When any department of the public service of a State becomes transferred to the Commonwealth, all officers of the department shall become subject to the control of the Executive Government of the Commonwealth.

Any such officer who is not retained in the service of the Commonwealth shall, unless he is appointed to some other office of equal emolument in the public service of the State, be entitled to receive from the State any pension, gratuity, or other compensation, payable under the law of the State on the abolition of his office.

Any such officer who is retained in the service of the Commonwealth shall preserve all his existing and accruing rights, and shall be entitled to retire from office at the time, and on the pension or retiring allowance, which would be permitted by the law of the State if his service with the Commonwealth were a continuation of his service with the State. Such pension or retiring allowance shall be paid to him by the Commonwealth; but the State shall pay to the Commonwealth a part thereof, to be calculated on the proportion which his term of service with the State bears to his

whole term of service, and for the purpose of the calculation his salary shall be taken to be that paid to him by the State at the time of the transfer.

Any officer who is, at the establishment of the Commonwealth, in the public service of a State, and who is, by consent of the Governor of the State with the advice of the Executive Council thereof, transferred to the public service of the Commonwealth, shall have the same rights as if he had been an officer of a department transferred to the Commonwealth and were retained in the service of the Commonwealth.

85. When any department of the public service of a State is transferred to the Commonwealth—

Transfer of  
property of  
State.

- (i.) All property of the State of any kind, used exclusively in connection with the department, shall become vested in the Commonwealth; but, in the case of the departments controlling customs and excise and bounties, for such time only as the Governor General in Council may declare to be necessary:
- (ii.) The Commonwealth may acquire any property of the State, of any kind used, but not exclusively used in connexion with the department; the value thereof shall, if no agreement can be made, be ascertained in, as nearly as may be, the manner in which the value of land, or of an interest in land, taken by the State for public purposes is ascertained under the law of the State in force at the establishment of the Commonwealth:
- (iii.) The Commonwealth shall compensate the State for the value of any property passing to the Commonwealth under this section; if no agreement can be made as to the mode of compensation, it shall be determined under laws to be made by the Parliament:
- (iv.) The Commonwealth shall, at the date of the transfer, assume the current obligations of the State in respect of the department transferred.

86. On the establishment of the Commonwealth, the collection and control of duties of customs and of excise, and the control of the payment of bounties, shall pass to the Executive Government of the Commonwealth.

87. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, of the net revenue of the Commonwealth from duties of customs and of excise not more than one-fourth shall be applied annually by the Commonwealth towards its expenditure.

The balance shall, in accordance with this Constitution, be paid to the several States, or applied towards the payment of interest on debts of the several States taken over by the Commonwealth.

Uniform  
duties of  
customs.

88. Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth.

Payment to  
States  
before  
uniform  
duties.

89. Until the imposition of uniform duties of customs—

(i.) The Commonwealth shall credit to each State the revenues collected therein by the Commonwealth.

(ii.) The Commonwealth shall debit to each State—

(a) The expenditure therein of the Commonwealth incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the State to the Commonwealth;

(b) The proportion of the State, according to the number of its people, in the other expenditure of the Commonwealth.

(iii.) The Commonwealth shall pay to each State month by month the balance (if any) in favour of the State.

Exclusive  
power over  
customs,  
excise, and  
bounties.

90. On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive.

On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect, but any grant of or agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, one thousand eight hundred and ninety-eight, and not otherwise.

Exceptions  
as to  
bounties.

91. Nothing in this Constitution prohibits a State from granting any aid to or bounty on mining for gold, silver, or other metals, nor from granting, with the consent of both Houses of the Parliament of the Commonwealth expressed by resolution, any aid to or bounty on the production or export of goods.

Trade  
within the  
Common-  
wealth to  
be free.

92. On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.

But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods

into the Commonwealth, less any duty paid in respect of the goods on their importation.

93. During the first five years after the imposition of uniform duties of customs, and thereafter until the Parliament otherwise provides—

Payment to States for five years after uniform tariffs.

(i.) The duties of customs chargeable on goods imported into a State and afterwards passing into another State for consumption, and the duties of excise paid on goods produced or manufactured in a State and afterwards passing into another State for consumption, shall be taken to have been collected not in the former but in the latter State :

(ii.) Subject to the last subsection, the Commonwealth shall credit revenue, debit expenditure, and pay balances to the several States as prescribed for the period preceding the imposition of uniform duties of customs.

94. After five years from the imposition of uniform duties of customs, the Parliament may provide, on such basis as it deems fair, for the monthly payment to the several States of all surplus revenue of the Commonwealth.

Distribution of surplus.

95. Notwithstanding anything in this Constitution, the Parliament of the State of Western Australia, if that State be an Original State, may, during the first five years after the imposition of uniform duties of customs, impose duties of customs on goods passing into that State and not originally imported from beyond the limits of the Commonwealth ; and such duties shall be collected by the Commonwealth.

Customs duties of Western Australia.

But any duty so imposed on any goods shall not exceed during the first of such years the duty chargeable on the goods under the law of Western Australia in force at the imposition of uniform duties, and shall not exceed during the second, third, fourth, and fifth of such years respectively, four-fifths, three-fifths, two-fifths, and one-fifth of such latter duty, and all duties imposed under this section shall cease at the expiration of the fifth year after the imposition of uniform duties.

If at any time during the five years the duty on any goods under this section is higher than the duty imposed by the Commonwealth on the importation of the like goods, then such higher duty shall be collected on the goods when imported into Western Australia from beyond the limits of the Commonwealth.

96. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.

Financial assistance to States.

**Audit.**

97. Until the Parliament otherwise provides, the laws in force in any Colony which has become or becomes a State with respect to the receipt of revenue and the expenditure of money on account of the Government of the Colony, and the review and audit of such receipt and expenditure, shall apply to the receipt of revenue and the expenditure of money on account of the Commonwealth in the State in the same manner as if the Commonwealth, or the Government or an officer of the Commonwealth, were mentioned whenever the Colony, or the Government or an officer of the Colony, is mentioned.

Trade and commerce includes navigation and State railways. Commonwealth not to give preference.

98. The power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any State.

Nor abridge right to use water.

99. The Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof.

100. The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.

Inter-State Commission.

101. There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance, within the Commonwealth, of the provisions of this Constitution relating to trade and commerce, and of all laws made thereunder.

Parliament may forbid preferences by State.

102. The Parliament may by any law with respect to trade or commerce forbid, as to railways, any preference or discrimination by any State, or by any authority constituted under a State, if such preference or discrimination is undue and unreasonable, or unjust to any State; due regard being had to the financial responsibilities incurred by any State in connexion with the construction and maintenance of its railways. But no preference or discrimination shall, within the meaning of this section, be taken to be undue and unreasonable, or unjust to any State, unless so adjudged by the Inter-State Commission.

Commissioners' appointment, tenure, and remuneration.

103. The members of the Inter-State Commission—

- (i.) Shall be appointed by the Governor General in Council:
- (ii.) Shall hold office for seven years, but may be removed within that time by the Governor General in Council, on an address from both Houses of the Parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity:
- (iii.) Shall receive such remuneration as the Parliament may fix; but such remuneration shall not be diminished during their continuance in office.

104. Nothing in this Constitution shall render unlawful any rate for the carriage of goods upon a railway, the property of a State, if the rate is deemed by the Inter-State Commission to be necessary for the development of the territory of the State, and if the rate applies equally to goods within the State and to goods passing into the State from other States.

Saving of  
certain  
rates.

105. The Parliament may take over from the States their public debts as existing at the establishment of the Commonwealth, or a proportion thereof according to the respective numbers of their people as shown by the latest statistics of the Commonwealth, and may convert, renew, or consolidate such debts, or any part thereof; and the States shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several States, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several States.

Taking over  
public debts  
of States.

## CHAPTER V.

### THE STATES.

106. The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

Saving of  
Constitu-  
tions.

107. Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be.

Saving of  
Power of  
State Par-  
liaments.

108. Every law in force in a Colony which has become or becomes a State, and relating to any matter within the powers of the Parliament of the Commonwealth, shall, subject to this Constitution, continue in force in the State; and, until provision is made in that behalf by the Parliament of the Commonwealth, the Parliament of the State shall have such powers of alteration and of appeal in respect of any such law as the Parliament of the Colony had until the Colony became a State.

Saving of  
State laws.

109. When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Inconsist-  
ency of  
laws.

Provisions  
referring to  
Governor.

110. The provisions of this Constitution relating to the Governor of a State extend and apply to the Governor for the time being of the State, or other chief executive officer or administrator of the government of the State.

States may  
surrender  
territory.

111. The Parliament of a State may surrender any part of the State to the Commonwealth; and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth.

States may  
levy charges  
for inspection  
laws.

112. After uniform duties of customs have been imposed, a State may levy on imports or exports, or on goods passing into or out of the State, such charges as may be necessary for executing the inspection laws of the State; but the net produce of all charges so levied shall be for the use of the Commonwealth; and any such inspection laws may be annulled by the Parliament of the Commonwealth.

Intoxicating  
liquids.

113. All fermented, distilled, or other intoxicating liquids passing into any State or remaining therein for use, consumption, sale, or storage, shall be subject to the laws of the State as if such liquids had been produced in the State.

States may  
not raise  
forces.  
Taxation of  
property of  
Commonwealth  
or State.

114. A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

States not to  
coin money.

115. A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.

Commonwealth  
not to legislate  
in respect of  
religion.

116. The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

Rights of  
residents in  
States.

117. A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

Recognition  
of laws, &c.,  
of States.

118. Full faith and credit shall be given, throughout the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State.

Protection  
of States  
from invasion  
and violence.

119. The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence.

120. Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effect to this provision.

Custody of offenders against laws of the Commonwealth.

## CHAPTER VI.

### NEW STATES.

121. The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.

New States may be admitted or established.

122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

Government of territories.

123. The Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question, increase, diminish, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected.

Alteration of limits of States.

124. A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected.

Formation of new States.

## CHAPTER VII.

### MISCELLANEOUS.

125. The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be

Seat of Government.







in the State of New South Wales, and be distant not less than one hundred miles from Sydney.

Such territory shall contain an area of not less than one hundred square miles, and such portion thereof as shall consist of Crown lands shall be granted to the Commonwealth without any payment therefor.

The Parliament shall sit at Melbourne until it meet at the seat of Government.

Power to  
Her Majesty  
to authorise  
Governor  
General to  
appoint  
deputies.

126. The Queen may authorise the Governor General to appoint any person, or any persons jointly or severally, to be his deputy or deputies within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor General such powers and functions of the Governor General as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Queen; but the appointment of such deputy or deputies shall not affect the exercise by the Governor General himself of any power or function.

Aborigines  
not to be  
counted in  
reckoning  
population.

127. In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.

## CHAPTER VIII.

### ALTERATION OF THE CONSTITUTION.

Mode of  
altering the  
Constitution.

128. This Constitution shall not be altered except in the following manner:—

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two or more than six months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the

electors in each State qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half of the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

## SCHEDULE.

### OATH.

I, *A.B.*, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law. So HELP ME GOD!

### AFFIRMATION.

I, *A.B.*, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.

(NOTE.—*The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.*)



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